STATE OF WISCONSIN

Compliance Manual
for
Implementing the Core Requirements of the Juvenile Justice and Delinquency Prevention Act of 2002

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INTRODUCTION

With the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), the United States Congress enacted legislation designed to provide protections for youth involved in the juvenile justice system, seeking to promote a fair, effective system that would result in positive outcomes. The JJDPA has been modified and reauthorized during the period since its initial enactment and is currently the primary federal legislation regarding juvenile justice.

The JJDPA creates the Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice and provides support and funding to states for juvenile justice and prevention programming.

The JJDPA requires that each state demonstrate compliance with four core requirements in order to receive its share of federal formula grant dollars. Wisconsin, as a participant in the JJDPA and recipient of JJDPA Formula Grants, follows the guidelines established by OJJDP in

- Deinstitutionalization of status and non-offenders
- Separation of alleged and adjudicated delinquents, status offenders, and non-offender juveniles from adult offenders in institutions
- Removal of juveniles from adult jails and lockups
- Addressing disproportionate minority contact.

Wisconsin has designated the Governor’s Juvenile Justice Commission (GJJC) as the State Advisory Group (SAG) to oversee adherence to the terms of the Act. The Office of Justice Assistance (OJA) is the state agency responsible to coordinate the JJDPA and juvenile justice system compliance efforts.

Pursuant to the state and federal legislative and administrative guidelines and laws, this manual has been developed to explain Wisconsin activity in adhering to three of the requirements of the JJDPA and OJJDP. It details the monitoring system established in Wisconsin and the steps OJA takes to comply with federal and state mandates.
For additional information regarding Wisconsin’s efforts to comply with the core requirements of the Juvenile Justice and Delinquency Prevention Act, please contact:

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EXECUTIVE ORDER #8
Relating to Creation of the Governor's
Juvenile Justice Commission

WHEREAS, the Federal Juvenile Justice and Delinquency Prevention Act requires
the composition and appointment of an advisory committee to carry out the functions
designated in the Act, and requires that its members be appointed by the Chief Executive of
each state; and

WHEREAS, the Office of Justice Assistance is designated by Wisconsin State
Statutes to serve as the state planning agency for administering the Juvenile Justice and
Delinquency Prevention Act;

NOW THEREFORE, I, SCOTT WALKER, Governor of the State of
Wisconsin, by the authority vested in me by the Constitution and the laws of this State, and
specifically by Wis. Stat. section 14.019, do hereby:

1. Create the Governor's Juvenile Justice Commission to serve as the primary body
responsible for the implementation of the Act in Wisconsin, with membership
composition of not less than 15 but no more than 20, and in accordance with the
federal Act, to serve at the pleasure of the Governor.

2. Designate the Commission to advise the Governor and the Legislature on matters
concerning juvenile justice.

3. Provide that staffing for the Commission shall be provided by the Office of Justice
Assistance.

4. Provide that the expenses of the members of the Commission be paid by the Office
of Justice Assistance.

IN TESTIMONY WHEREOF, I
have hereunto set my hand and caused
the Great Seal of the State of Wisconsin to be affixed. Done at the
Capitol in the City of Madison this
twenty fifth day of January, in the year
two thousand eleven.

SCOTT WALKER
Governor

By the Governor:
DOUGLAS LA FOLLETTE
16.964 Office of justice assistance.

(1g) In this section, "office" means the office of justice assistance.

(1m) The office shall:

(a) Serve as the state planning agency under the juvenile justice and delinquency prevention act of 1974, P.L. 93-415.

(b) Prepare a state comprehensive juvenile justice improvement plan on behalf of the governor. The plan shall be submitted to the joint committee on finance in accordance with s. 16.54 and to the appropriate standing committees of each house of the legislature as determined by the presiding officer of each house. The plan shall be updated periodically and shall be based on an analysis of the state's juvenile justice needs and problems.

(c) Recommend appropriate legislation in the criminal and juvenile justice field to the governor and the legislature.

(d) Cooperate with and render technical assistance to state agencies and units of local government and public or private agencies relating to the criminal and juvenile justice system.

(e) Apply for contracts or receive and expend for its purposes any appropriation or grant from the state, a political subdivision of the state, the federal government or any other source, public or private, in accordance with the statutes.

(f) Maintain a statistical analysis center to serve as a clearing house of justice system data and information and conduct justice system research and data analysis under this section.

(g) Collect information concerning the number and nature of offenses known to have been committed in this state and such other information as may be useful in the study of crime and the administration of justice. The office may determine any other information to be obtained regarding crime and justice system statistics. The information shall include data requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(h) Furnish all reporting officials with forms or instructions or both that specify the nature of the information required under par. (g), the time it is to be forwarded, the method of classifying and any other matters that facilitate collection and compilation.

(i) Apply for contracts and receive and expend moneys and grants from the federal government related to homeland security.

(2) All persons in charge of law enforcement agencies and other criminal and juvenile justice system agencies shall supply the office with the information described in sub. (1m) (g) on the basis of the forms or instructions or both to be supplied by the office under sub. (1m) (g).
The Office of Justice Assistance (OJA) is dedicated to improving public safety in Wisconsin through a variety of criminal justice and anti-terrorism programs.

OJA is the state’s administering agency for state and federal criminal justice and homeland security grant funds including the federal Juvenile Justice Delinquency Prevention Act, Violence Against Women Act, Justice Assistance Grant program, and State Homeland Security Grant program. OJA provides financial and technical assistance to public safety, first response and emergency management agencies, local and tribal governments, and non-profit organizations throughout the state.

OJA advises the Governor and other public officials on criminal justice, juvenile justice, and homeland security issues.

OJA’s has primary responsibility for carrying out the state coordination of automated justice information systems among state and local criminal justice agencies. OJA’s Wisconsin Justice Information Sharing (WIJIS) program provides a statewide strategic vision of justice information sharing as well as innovative technical solutions that improve information sharing between law enforcement and justice agencies, and the flow of electronic information through the justice system.

OJA’s Statistical Analysis Center (SAC) conducts research and publishes reports on high visibility justice issues. The SAC manages the state’s Uniform Crime Reporting and Incident-based Reporting programs, Traffic Stop Data Collection analysis, and Treatment Alternatives and Diversion data analysis.

OJA is responsible for the development and implementation of the statewide public safety interoperable communication system. OJA develops the Statewide Homeland Security Plan, and leads efforts to identify gaps in the state’s protection, set priorities for use of federal funds to fill those gaps and awards grants to increase the capacity of first responders and communities to prevent, respond to, and recover from catastrophic events, including terrorist attacks.

OJA also assists in locating and registering sex offenders who have not complied with the state’s sex offender registry requirements.

Several advisory groups and gubernatorial appointed commissions advise OJA on its programs and funding decisions, including the: Governor’s Juvenile Justice Commission, Interoperability Council, Violence Against Women Act Advisory Committee, WIJIS Policy Advisory Group, Treatment Alternatives and Diversion advisory group, and numerous other justice and grant advisory groups.

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APPLICATION OF JJDPA

The JJDPA only applies when juveniles are held **SECURELY**

**DEFINITIONS**

**SECURE** - When a juvenile is physically detained or confined in a locked room or cell, or is handcuffed to a stationary object. The juvenile is not free to leave the building.

**NON-SECURE** - The juvenile may be in custody but is “free” to leave the building. The juvenile may be handcuffed to him/herself but not to a stationary object, and may be placed in a room with no lock on the door.

**STATUS OFFENDER** - The juvenile has committed an offense that would not be criminal if committed by an adult: e.g., running away, underage drinking, underage possession of alcohol or tobacco, curfew violation, truancy. A warrant or a capias issued where the original offense was a status offense remains a status offense.

[Note: Illegal immigrants with no delinquent charges are monitored as status offenders].

**DELINQUENT** - The juvenile has committed an offense that would be criminal if committed by an adult.

**NONOFFENDER** - The juvenile is dependent, neglected, or is mentally ill and not involved in delinquency.

**ACCUSED** - The juvenile is “accused” of committing an offense (either status or delinquent).

**ADJUDICATED** The juvenile is found by the court to have committed the offense (either status or delinquent)
A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility but not be in a secure detention or confinement status. OJJDP’s Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups states that all of the following policy criteria, if satisfied, will constitute nonsecure custody of a juvenile in an adult jail or lockup facility:

- The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area or if a secure area is used only for processing purposes.

- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility.

- The use of the area(s) is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court.

- In no event can the area be designed or intended to be used for residential purposes.

- The juvenile must be under continuous visual supervision (which may include electronic supervision, e.g. camera) by a law enforcement officer or facility staff during the period of time that he or she is in nonsecure custody.

In addition, a juvenile placed in the following situations would be considered in a nonsecure status:

- A juvenile handcuffed to a non-stationary object. If the five criteria listed above are adhered to, handcuffing techniques that do not involve cuffing rails or other stationary objects are considered nonsecure.

- A juvenile being processed through a secure booking area. Where a secure booking area is all that is available and continuous visual supervision is provided throughout the booking process and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with state law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued nonsecure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
• A juvenile placed in a secure police car for transportation. The JJDP Act applies to facilities; therefore, a juvenile placed in a police car for transportation would be in a nonsecure status.

• A juvenile placed in a nonsecure runaway shelter but prevented from leaving because of staff restricting access to exits. A facility may be nonsecure (i.e., staff secure) if physical restriction of movement or activity is provided solely through facility staff.

• A juvenile placed in a room that contains doors with delayed egress devices that have been approved in writing (including a specification of the maximum time delay allowed) by the authority having jurisdiction over fire codes and fire inspections in the area in which the facility is located and that comply with the egress delay established by the authority having jurisdiction over fire codes and fire inspections. In no case shall this delay exceed 30 seconds.
COMPLIANCE MONITORING
BARRIERS AND STRATEGIES

Statement of Purpose

Describing the strategies to be implemented in establishing a monitoring system will facilitate the effort to overcome barriers to ensuring adherence to the mandates of the JJDPA. Pursuant to the requirements of OJJDP, the State of Wisconsin has designated the Office of Justice Assistance (OJA) as the State Planning Agency to ensure compliance with the JJDPA. The Governor’s Juvenile Justice Commission (GJJC) serves as the State Advisory Group (SAG).

Policy

The following procedures are in place and will be utilized to identify barriers and challenges to the successful implementation of practices to ensure an adequate compliance monitoring system.

Procedures

1. The GJJC includes a Policy and Legislation/Compliance committee which meets at least quarterly. The committee meetings include reviews of the status of compliance and any identified problems or barriers that may affect the status of Wisconsin in its efforts to maintain compliance with the requirements of the JJDPA. The GJJC assists in the development of state and local strategies to overcome any barriers to full compliance.

2. The state compliance monitor or, in the event of a vacancy in that position, the juvenile justice specialist, serves as staff for the Policy and Legislation/Compliance committee. At each committee meeting, the compliance monitor will report on
   • Any barriers in implementing and maintaining a monitoring system and barriers faced in maintaining compliance with the JJDPA.
   • Recommendations for state and local strategies and plans to overcome those barriers
   • Updates on strategies and activities taking place to overcome barriers in each critical geographic area.

3. At each quarterly meeting, the GJJC will devote a portion of its agenda to receiving a report from the Policy and Legislation/Compliance committee. The
report will include the recent activities of the compliance monitor as well as the current compliance status; barriers to compliance; recommended state and local strategies to overcome any barriers; and updates on strategies and activities taking place to overcome barriers in each critical geographic area.

4. Wisconsin’s compliance report is due to OJJDP each year by June 30th. At each March Policy and Legislation/Compliance Committee and GJJJC meeting, the compliance monitor will submit a draft compliance report for the previous calendar year. Data will be compiled for municipal lockups and county jails, secure juvenile detention facilities, court holding facilities and secure juvenile correctional facilities. The report will also include violations from any spot-checks done at any other facilities (adult prisons, shelters, secure mental health).

5. Using input from the Policy and Legislation/Compliance committee and the GJJJC, OJA will develop a written plan, if needed, to address any barriers in the coming year.

6. OJA’s juvenile justice team, including the compliance monitor, will implement the written plan and will provide updates to the committee and GJJJC.

7. The written plan may include, among other activities
   - Regional training workshops for those agencies involved in monitoring or implementing the JJDPDA
   - Administrative meetings with agencies involved in monitoring or implementing the JJDPDA
   - Education around legislation affecting monitoring or implementing the JJDPDA
   - Outreach and coordination of efforts with agencies requiring assistance to maintain compliance with the JJDPDA core requirements.
Statement of Purpose

In 1994, Congress required that all communities wishing to apply for Title V funds first be certified as being in compliance with the four core requirements of the JJDPA. The juvenile justice team – through the efforts of the compliance monitor, juvenile justice specialist, and disproportionate minority contact coordinator – bear the responsibility of informing all local agencies, including law enforcement and human services, of this requirement so they may direct their efforts towards compliance prior to their community applying for funds.

Once a compliance monitoring system has been established, it is critical to outline the administrative procedures which will be used to receive, investigate and respond to reports of compliance violations.

Inspections or other mechanisms which identify incidents of non-compliance or other deficiencies which may be dangerous to confined juveniles are only of value if the monitoring efforts lead to correction or elimination of the identified problem. Written violation policies and procedures should be available so all concerned will know what is expected of them and what action will be taken.

Policy

In Wisconsin, the Office of Justice Assistance (OJA) is the agency in charge of ensuring compliance with the JJDPA, while the Department of Corrections (DOC) is the agency given statutory authority to decide whether a facility (jail, lockup, collocated facility or detention center) may or may not be approved to hold juveniles. OJA employs a compliance team which is responsible for receiving, investigating, and responding to reports of compliance violations.

Violation reports can be received from several sources: through the efforts of the compliance monitor, the facility itself, authorizing county human services/intake, the Public Defender’s Office, parents, agents of the Department of Corrections during their annual site visits to all facilities, or other reports to their team of inspectors.

Procedures

1. The compliance monitor/monitoring team will perform statewide monitoring of all juvenile detention centers and collocated facilities as well as all jails and lockups approved to hold juveniles. A detailed description of the monitoring process and tasks is contained in these polices. The DOC also monitors these facilities and works closely with OJA to ensure that all suspected violations are reported to and
investigated by OJA staff. DOC sends a jail/lockup inspection form reporting results of each facility inspection, including whether any juveniles were held in the facility.

2. The compliance monitor/monitoring team is the primary entity employed to discover, report and investigate compliance violations throughout the state in detention centers, collocated facilities, and authorized jails and lockups. The DOC inspects all other jails and lockups. Violations are usually found through the detailed review of holding logs. The review may occur either onsite when the compliance monitor or DOC inspector reviews the logs or when the facility mails information from the logs to OJA. All detention centers, including detention centers that are part of collocated facilities, report into the JSDR. The compliance monitor/monitoring team will follow up on any suspected violations.

3. The compliance monitor/monitoring team will investigate any compliance violation report received from an independent source, including the GJJC, DOC, administrators of public and private agencies, parents, youth, or other citizens.

4. The process used to receive, investigate and respond to compliance violation reports is:

- All reports of violations will be given to the compliance monitor or designated member of the monitoring team.
- Any reported or identified DSO, Jail Removal, or Sight and Sound violation will be fully investigated by the compliance monitor or monitoring team. The compliance monitor will alert the DOC inspector responsible for that region that OJA will be investigating a possible compliance concern. A telephone call to the superintendent/administrator of the facility and/or the designated data entry person will be the first step in investigating whether or not the violation is actual or resulted from a data or other entry.

The investigation may involve a review of the juvenile’s case file at the facility to confirm whether a violation actually occurred. In many cases, incorrect information is recorded or entered into the JSDR and the entry may be a violation. Further investigation may include contacting the authoring social worker or intake officer to gain further information from the juvenile’s court records. All violations will be discussed with the facility administrator/superintendent or data entry contact to explain why the violation or error occurred and what remedial action will be taken to prevent future violations or errors. In the event the authorizing county was not that of the detention center, a representative of the authorizing county
will receive written notice of the violation as well as telephone contact to discuss the nature of the violation. Technical assistance will be offered to any county having a violation.

- The compliance monitor will provide follow-up onsite visits to facilities where compliance appears to be a problem. The DOC inspector will be made aware of the scheduled visit. Intensive follow-up may require quarterly on-site visits to review JSDR data against the juvenile holding logs. The purpose of the onsite visits would be two-fold: 1) to review records and 2) to provide technical assistance on steps the facility needs to take to reach compliance and/or appropriate data entry if that was the cause of the apparent violation(s).

- The compliance monitor will provide progress reports at all Policy and Legislation/Compliance committee and GJJC meetings, whether the quarterly or other meeting.

5. OJA may follow-up a compliance violation with any action that is deemed responsible and appropriate. All actual violations, especially those that appear to be a policy or practice, will be shared with the appropriate regional DOC inspector.

6. For internal tracking purposes, the following steps will be taken on every violation:

- The apparent violation will be recorded and a copy maintained in the electronic compliance monitor file. This electronic file contains a Master Facility List as well as monthly reports of apparent violations for all inspected facilities.
- Records of events surrounding actual violations; suggested corrective actions; and all contacts with DOC inspectors, corrective actions taken by the DOC will be maintained in the appropriate facility files.
- The violations will be recorded for yearly reporting to the OJJDP.
A part of the data collection process implemented by OJA is the use of the Juvenile Secure Detention Registry (JSDR). The electronically maintained system allows law enforcement agencies and youth-holding facilities throughout the state to provide information to OJA detailing the circumstances regarding youth held in their respective facilities. Information submitted includes the

- Authorizing county
- Identity of the facility
- Age of the youth at the time of admission
- Race
- Sex
- Underlying statute that is the basis of the hold
- Reason code
- Admission date and time
- Release date and time
- Length of stay

There is usually an identified official responsible for the submission of this information. OJA maintains and shares *A User’s Guide* with those who are responsible for the submission of information which then will be reviewed by the compliance monitor as a part of the site inspection.

A part of the review during the inspection will include the comparison of a randomly-selected month of entries submitted by the facility to OJA with the on-site records to ensure they are consistent.
DATA VERIFICATION

For Jails

1. Review the logs and/or files. The records should include information regarding the juvenile's
   - Name or ID number
   - Date of Birth or Age
   - Gender
   - Race/Ethnicity
   - Most Serious Charge/Offense
   - County of Residence
   - Date/Time of Admission
   - Date/Time of Release
   - Release Placement
   - (If Applicable) Time to/Return from Court

2. Because each of the jails in Wisconsin that is authorized to hold juveniles operates under the Rural Exception, check the admission and release times to ensure that no accused delinquent is held more than 48 hours (excluding weekends and holidays) before the initial court appearance. No juvenile should be held beyond 6 hours following the court hearing.

3. The logs should be reviewed to determine the basis for the hold. Status offenders and non-offenders cannot be held in secure detention for any period after the booking process is completed. The review should note the offense for which the juvenile is held.

4. Review the adult logs for seventeen-year-olds. Determine whether any seventeen-year-olds were held for status (underage-drinking) offenses.

5. Note the total number of juveniles held during the review period.

6. Make a comparison of one randomly-selected month of juvenile holds to the information reported to the JSDR.

For Lockups

1. Review the logs and/or files. The records should include information regarding the juvenile’s
   - Name or ID number
   - Date of Birth or Age
   - Gender
   - Race/Ethnicity
   - Most Serious Charge/Offense
   - County of Residence
2. Review the admission and release times to ensure that no accused delinquent was held longer than 6 hours.

3. Review the logs to determine the offense for which the juvenile was held. Status offenders and non-offenders cannot be held for any length of time in secure detention after the booking process is completed.

4. Review the adult logs for seventeen-year-olds. Determine whether any seventeen-year-olds were held for status (underage-drinking) offenses.

5. Note the total number of juveniles held during the review.

6. Make a comparison of one randomly-selected month of juvenile holds to the information reported to the JSDR.

**For Juvenile Correctional Facilities**

1. Review the logs and/or files. Ensure that necessary information is noted, including
   - Name or ID number
   - Date of Birth or Age
   - Gender
   - Race/Ethnicity
   - Most Serious Charge/Offense
   - County of Residence
   - Date/Time of Admission
   - Date/Time of Release
   - Release Placement
   - (If Applicable) Time to/Return from Court

2. Review the logs to determine the age of offenders held in the facility. Any offender held in the facility should be there pursuant to a juvenile court order and should not be there past the age of 17.5 years.

3. Review at least ten logs to determine the offense for which the juvenile is held.

**For Secure Detention Facilities**

1. Review the logs and/or files. Ensure that necessary information is noted, including
   - Name or ID number
   - Date of Birth or Age
- Gender
- Race/Ethnicity
- Most Serious Charge/Offense
- County of Residence
- Date/Time of Admission
- Date/Time of Release
- Release Placement
- (If Applicable) Time to/Return from Court

2. Review the logs to determine the age of the offender to ensure that no
delinquent/criminal offender was over 17.5 years of age while incarcerated and
that each juvenile was held pursuant to a juvenile court order.

Accused status offenders held pursuant to exceptions governed by the Valid
Court Order rule may be held so long as under the age of 18 because, pursuant
to Wisconsin law, they are still juveniles.

3. Review the logs to determine the offense for which the juvenile was held.

4. If the total number of juveniles held pursuant to the Valid Court Order exception
is under 50, OJJDP standards require that all the files be reviewed. If the total
number is 50 or more, OJJDP policies require that 10% of the VCO-files be
reviewed. In either case, the VCO checklist should be completed. [The current
Wisconsin practice is to review every VCO file].

5. Review the facility admission log and compare at least one randomly-selected
month to data reported to the JSDR.
THE INSPECTION VISIT

1. On arrival at the facility, note the layout of the entrance.
   - Is there a lobby/waiting area in which non-offenders can be maintained and
     supervised?
   - Are there non-secure conference rooms or offices in the entry area?
   - At what point does the secure area of the facility begin?

2. Obtain the contact information (including, if possible, a business card) of the
   person facilitating the inspection. Information should include
   - Title and rank of contact
   - Telephone number
   - Fax number, if available

3. If the file does not contain a facility map/layout, request one. If the file contains
   such a map, check to see that it is current.

4. If the file does not contain the department policies regarding the handling of
   children and juvenile, request a copy. If the file contains the policies, check to
   ensure they are current.

5. Request a tour of the facility. Request that the tour begin at the point the youth
   would be brought into the facility.
   - Note the location of booking and printing activity
   - Identify the manner in which information regarding the youth is entered
     into facility records
   - If juveniles are held in the facility, note the location of the cells/rooms,
     particularly in relation to any cells/rooms in which adults may be held.
     Particularly note procedures in place to prevent sight and sound contact
   - Determine if there are areas in which non-offenders and status offenders
     would be questioned/maintained in the facility. Identify at what stage, if
     applicable, contact with intake occurs
ADULT JAILS AND LOCKUPS

DEFINITIONS

An adult jail is a locked facility administered by county or local law enforcement and correctional agencies. Adult jails are used to detain adults charged with violating criminal law pending trial, convicted adult criminal offenders sentenced generally for no more than one year and convicted adult criminal offenders waiting transfer to a state prison or community corrections facility.

An adult lockup is similar to an adult jail except that it is a municipal police temporary holding facility that does not hold persons after they have been formally charged or convicted.

938.02(1) "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.

APPLICABLE WISCONSIN STATUTES

938.208(10r) "Juvenile detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility.

(1) COUNTY JAIL. Subject to s. 938.208, a county jail may be used as a juvenile detention facility if the criteria under either par. (a) or (b) are met:

(a) There is no other juvenile detention facility approved by the department or a county which is available and all of the following conditions are met:

1. The jail meets the standards for juvenile detention facilities established by the department.
2. The juvenile is held in a room separated and removed from incarcerated adults.
3. The juvenile is not held in a cell designed for the administrative or disciplinary segregation of adults.
4. Adequate supervision is provided.
5. The court reviews the status of the juvenile every 3 days.

(b) The juvenile presents a substantial risk of physical harm to other persons in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a hearing and may be transferred only upon a court order.
MUNICIPAL LOCKUP.

(a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.
2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her hearing under s. 938.21 (1) (a).
3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.
4. The juvenile is held for investigative purposes only.

(b) The department shall promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules shall be designed to protect the health, safety and welfare of the juveniles held in those facilities.

(3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.
DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

DEFINITIONS

Status Offender - A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles) and truancy.

Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders.

Non-Offender - A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but have not committed a delinquent act.

Delinquent - A juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult.

938.02(3m) "Delinquent" means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in ss. 938.17, 938.18 and 938.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified in s. 938.355 (6g).

APPLICABLE FEDERAL RULES

- No status offender or non-offender may be placed in a secure setting for any period of time in an adult jail or lockup. If they are, complete information about them must be recorded on a Secure Juvenile Holding Log, and this action will be counted as a violation of both the DSO and Jail Removal core protection requirements. Therefore, one status offender or non-offender placed in a secured setting counts as two violations.

- Booking: Law enforcement may complete the booking process of a status offender or non-offender in a secure booking area only if

  1) there is no unsecured booking area available,
  2) the juvenile is under continuous law enforcement visual supervision,
  3) there are no adult offenders present and
  4) the juvenile is immediately removed from the secure booking area to a non-secure area for questioning or further processing.

If these conditions are not met, the juvenile is considered to be in a “secure setting” and it is a violation of DSO and Jail Removal.
• A status offender or non-offender may be handcuffed to him/herself, but cannot be handcuffed to a stationary object.

• A status offender or non-offender is considered to be in non-secure custody if they are under continuous visual law enforcement supervision and physical restriction of movement or activity is provided solely through facility staff (staff secure).

• Any juvenile in a police car, or other vehicle in law enforcement control, is considered to be in non-secure custody.

• Information on any juvenile who is placed in secure custody must be recorded on a Secure Juvenile Log for the compliance monitor’s review.
JAIL REMOVAL

DEFINITIONS

**Accused** - A juvenile accused of, or charged with, committing an offense, or alleged to have committed an offense (not yet adjudicated).

**Adjudicated** - The court has determined that is has been proven beyond a reasonable doubt that the juvenile has committed a delinquent act or status offense, or that the juvenile has pled guilty to committing a delinquent act or status offense.

**Status Offender** - A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles) and truancy.

[**Possession of a handgun by a juvenile** is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders].

**Non-Offender** - A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but have not committed a delinquent act.

**Delinquent** - A juvenile who has been charged with, or adjudicated for, any conduct that would be criminal if committed by an adult.

APPLICABLE FEDERAL RULES

- No juvenile shall be held securely in an adult jail or adult lockup. Any secure holding or detention of a juvenile in these facilities for purposes (i.e., punishment or time-out) other than those excepted below is a violation of the jail removal core requirement.

- **Exceptions to the Jail Removal Rule**

  1) **6-Hour Hold Exception** - The Office of Juvenile Justice and Delinquency Prevention regulations allow for a “6-hour grace period” that permits the secure detention of juveniles in adult jails and lockups under the following circumstances:

- An accused delinquent may be detained for up to six hours for the purposes of identification, processing, and to arrange for release to parents or transfer to
juvenile court, juvenile shelter or a juvenile detention center. During this time no
sight and sound contact with adult inmates is allowed.

- An accused or adjudicated delinquent may be detained for up to six hours before
  a court appearance and up to an additional six hours after a court appearance
  awaiting transport or release. During this time no sight and sound contact with
  adult inmates is allowed. These times cannot be combined.

These 6-hour grace periods start the moment the juvenile is placed in the secured
setting and the “clock” cannot be stopped until the juvenile is permanently removed from
the secured setting.

2) Exception for Transferred or Direct File Juveniles - Juveniles who have
been judicially waived to the adult court or who are subject to the original jurisdiction
[938.183] statute, or are otherwise under the jurisdiction of the adult criminal court do
not fall under the purview of the JJDP Act.

3) Rural Removal Exception - The JJDPA also provides for a “rural exception,”
which allows juveniles who are accused of delinquency offenses to be detained in an
adult facility for up to 48 hours (or longer due to extenuating circumstances), after being
taken into custody and while awaiting an initial court appearance.

The OJJDP allows an extension of the 6 hours to up to 48 hours (excluding weekends
and holidays) only prior to an initial court appearance if a facility has pre-approval to do
so based on their rural geographic location. In order to qualify for the exception,
- the geographic area having jurisdiction over the juvenile must be outside a
  metropolitan statistical area as defined by the US Office of Management and
  Budget and
- there must be no existing acceptable alternative placement for the juvenile.
- the facility must be able to maintain Sight and Sound Separation between adult
  and juvenile inmates.

Facilities approved for the rural exception have additional time for a juvenile awaiting an
initial court appearance if:
  - the facility is located where conditions of distance to be traveled or the lack of
    highway, road, or other ground transportation does not allow for court
    appearances within 48 hours a delay (not to exceed additional 48 hours) or;

  - the facility is located where conditions adverse to safety exist (e.g., severe, life-
    threatening weather conditions that do not allow for reasonably safe travel), the
time for an appearance may be delayed until 24 hours after the time that such
conditions allow for reasonably safe travel.

These extended time periods cannot be used after the initial court appearance. After the
initial court appearance, the 6-hour exception applies and the juvenile could be held
only for up to 6 hours after a court appearance in order to be transferred or released.
938.209(2m)  MUNICIPAL LOCKUP.

(a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

2. The juvenile is held in the municipal lockup facility for **not more than 6 hours** while awaiting his or her hearing under s. 938.21 (1) (a).

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

938.183  Original adult court jurisdiction for criminal proceedings.

(1) JUVENILES UNDER ADULT COURT JURISDICTION. Notwithstanding ss. 938.12 (1) and 938.18, courts of criminal jurisdiction have exclusive original jurisdiction over all of the following:

(a) A juvenile who has been adjudicated delinquent and who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth or who has been adjudicated delinquent and who is alleged to have committed a violation of s. 940.20 (2m).

(am) A juvenile who is alleged to have attempted or committed a violation of s. 940.01 or s. 940.02 or 940.05 on or after the juvenile's 10th birthday.

(ar) A juvenile specified in par. (a) or (am) who is alleged to have attempted or committed a violation of any state criminal law in addition to the violation alleged under par. (a) or (am) if the violation alleged under this paragraph and the violation alleged under par. (a) or (am) may be joined under s. 971.12 (1).

(b) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation following waiver of jurisdiction under s. 48.18, 1993 stats., or s. 938.18 by the court assigned to exercise jurisdiction under this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

(c) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation over which the court of criminal jurisdiction had original jurisdiction under this section or if proceedings on a previous violation over which the court of criminal jurisdiction has original jurisdiction under this section are still pending.

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 (1c) (a); 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.
**SIGHT AND SOUND SEPARATION**

**DEFINITIONS**

**Sight & Sound Contact** - Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. **Sight contact** is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. **Sound contact** is defined as direct oral communication between incarcerated adults and juvenile offenders.

**Non-residential areas** - Areas within a secure facility such as sally ports, admissions and processing areas, and areas used for dining, education, recreation, vocational training, health care, passage of inmates, etc.

**Residential areas** - Areas within a secure facility used for sleeping and hygiene purposes.

**Time-phasing** - Use of the same non-residential area for adults and juveniles, but not at the same time. (Written policies should be in place to ensure proper use and timing for each area).

**APPLICABLE FEDERAL RULES**

No physical or sustained sight and sound contact is allowed between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees.

- Separation must be maintained in all secure areas, residential and non-residential, of adult jails and adult lockups. This may be accomplished architecturally or through time-phasing. If time-phasing is used, policies and procedures need to be in place to support this.

- Brief and inadvertent or accidental contact between juvenile offenders in secure custody status and incarcerated adults in secure non-residential areas or areas that are not dedicated for use only by juvenile offenders, **does not constitute a reportable violation** and does not have to be documented.

- Any contact between juveniles in a secure custody status and incarcerated adults in a dedicated juvenile area or any residential area of a secure facility **is a reportable violation**.

- **Booking** - A juvenile is not considered to be in secure custody status during booking when a secured booking area is all that is available, continuous visual supervision (supported by policies and procedures) is provided throughout the booking process, and the juvenile remains in the booking area only long enough
to be photographed and fingerprinted. Therefore, separation protections would not apply during this immediate time. However, if the juvenile is not immediately removed and separated following the booking process, the juvenile is considered to be in a secured status and the event must be recorded on the Secure Juvenile Log.

- A juvenile who has been waived to adult court or who has been the subject of an original jurisdiction filing pursuant to Wis. Stats. Sec. 938.183 on a felony criminal charge is exempt from the federal separation requirement.
ADULT PRISONS

Status Offenders - The JJDP Act prohibits the placement of status offenders and non-offenders in secure detention facilities or secure correctional facilities. Holding status offenders or non-offenders in an adult prison would be an immediate violation of the JJDP Act.

Delinquent Offenders - The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, the JJDP Act limits the facilities from which juveniles must be removed to adult jails or lockups. The requirement does not apply to adult prisons. Therefore, holding a delinquent offender in an adult prison is not a violation of the jail removal requirement.

- The JJDP Act states that “juveniles alleged to be or found to be delinquent shall not be detained or confined in any institution in which they have contact with adult persons incarcerated because they have been convicted of a crime or awaiting trial on criminal charges.” Therefore, complete separation must be provided between juvenile delinquent offenders and adult inmates.

Waived Juveniles - The JJDP Act states that “no juvenile shall be detained or confined in any jail or lockup for adults....” Therefore, it is not a violation of jail removal to hold a juvenile in an adult prison if that juvenile has been formally transferred or direct filed into criminal court and criminal felony or misdemeanor charges have been filed.

- A juvenile who has been waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the separation requirements of the JJDP Act. This is due to the fact that such a juvenile is not alleged to be or found to be delinquent (i.e., the juvenile is under a criminal proceeding, not a delinquency proceeding).

Applicable Wisconsin Statutes

938.209(3) Juveniles under adult court jurisdiction. The restrictions (calling for sight and sound separation from adults) do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

938.183(3) Placement in state prison; parole. When a juvenile who is subject to a criminal penalty under sub. (1m) or s. 938.183 (2)...attains the age of 17 years, the department may place the juvenile in a state prison
**COLLOCATED FACILITIES**

**DEFINITIONS**

**Collocated facilities** are facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds.

**APPLICABLE FEDERAL RULES**

Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

- Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas.

- Separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility which provides for a full range of separate program services. No program activities may be shared by juveniles and adults. Time phasing of common use nonresidential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns.

- Separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (medical care, food service, laundry, maintenance and engineering, etc.) who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both populations (subject to state standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities.

- In states that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards (on the same basis as a free-standing juvenile detention center) and be licensed as appropriate. If there are no state standards or licensing requirements, OJJDP encourages states to establish administrative requirements that authorize the state to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

- An annual onsite review of the facility must be conducted by the compliance monitoring staff.
COURT HOLDING FACILITIES

DEFINITION

A court holding facility is a secure facility, other than an adult jail or lockup that is used to temporarily detain persons immediately before or after detention hearings or other court proceedings. Court holding facilities, where they do not detain individuals overnight (i.e., are not residential) and are not used for punitive purposes or other purposes unrelated to a court appearance, are not considered adult jails or lockups.

FEDERAL RULES

- A status offender or delinquent offender placed in a court holding facility is exempt from the deinstitutionalization requirement if the facility meets the criteria listed in the definition above. Facilities, however, remain subject to the separation requirements of the JJDP Act.
- The separation requirements pertain to status offenders, non-offenders, and alleged or adjudicated delinquent offenders.
- Court holding facilities impose an inherent or practical time limitation in that juveniles must be brought to and removed from the facility during the same judicial day.
- The state must monitor court holding facilities to ensure that they continue to meet the definition and purpose listed above.
JUVENILE DETENTION FACILITIES

DEFINITIONS

**Status Offender** - A juvenile who has been charged with, or adjudicated for, conduct that would not be criminal if committed by an adult. Examples include: running away, underage drinking, underage possession of alcohol or tobacco, curfew violation (if the curfew ordinance applies only to juveniles), and truancy. Possession of a handgun by a juvenile is excluded from the status offense classification by state and federal laws. Juveniles who are illegal immigrants and have not committed a delinquent act are monitored as status offenders.

**Non-Offender** - A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, or mental health issues, but not a delinquent act.

**Juvenile Detention Center** - A secure facility used solely for the lawful custody of accused or adjudicated juvenile offenders or non-offenders and not adjoining an adult jail or lockup.

**Sight & Sound Contact** - Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. **Sight contact** is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. **Sound contact** is defined as direct oral communication between incarcerated adults and juvenile offenders.

APPLICABLE FEDERAL RULES

Deinstitutionalization of Status Offenders (DSO) and Sight and Sound Separation are the only core protection requirements that apply to juvenile detention centers. The Jail Removal requirement is not applicable as juvenile delinquents may be held in or sentenced to juvenile detention or correctional facilities for longer periods of time.

- Accused or adjudicated delinquent offenders, status offenders and non-offenders cannot have sight or sound contact with adult inmates, including inmate trustees. Inmate trustees who perform maintenance or other duties at juvenile detention centers must be sight and sound separated from the juvenile detainees at all times.

- A juvenile who is the subject of original jurisdiction or waived or is otherwise under the jurisdiction of a criminal court may be detained or confined in a juvenile correctional facility or juvenile detention facility with other juveniles under the jurisdiction of the juvenile court. However, within 6 months after the youth reaches the age of 18, he or she **must** be separated from the juvenile population.
• An adult held for a delinquency proceeding can be held in a juvenile detention center or a juvenile training school.

APPLICABLE WISCONSIN STATUTES

938.02(10r) "Juvenile detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

48.19 Taking a child into custody.

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

(a) A warrant.

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

(c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1).

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

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

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

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

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

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker.
8. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

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

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

48.205 Criteria for holding a child or expectant mother in physical custody.

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

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

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

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

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

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

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

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.
Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

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

1. There is no other juvenile detention facility approved by the department of corrections or a county which is available and:
   
   a. The jail meets the standards for juvenile detention facilities established by the department of corrections;
   
   b. The child is held in a room separated and removed from incarcerated adults;
   
   c. The child is not held in a cell designed for the administrative or disciplinary segregation of adults;
   
   d. Adequate supervision is provided; and
   
   e. The judge reviews the status of the child every 3 days.

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

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

1. Provide intake services 24 hours a day, 7 days a week, for the purpose of screening children taken into custody and not released under s. 48.20 (2) and the adult expectant mothers of unborn children taken into custody and not released under s. 48.203 (1).

2. Interview, unless impossible, any child or expectant mother of an unborn child who is taken into physical custody and not released, and when appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. If an adult expectant mother of an unborn child cannot be interviewed, the intake worker shall consult with an adult relative or friend of the adult expectant mother. No child may be placed in a juvenile detention facility unless the child has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.

3. Determine whether the child or the expectant mother of an unborn child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2).
(a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit court commissioner within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed when the child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or when the child is a runaway from another state, in which case a written statement of the reasons for holding the child in custody shall be substituted if the petition is not filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays, and legal holidays, or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in pars. (b) and (bm). A parent not present at the hearing shall be granted a rehearing upon request for good cause shown.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or circuit court commissioner for an additional 72 hours from the time of the hearing, excluding Saturdays, Sundays, and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe any of the following:

1. That additional time is required to determine whether the filing of a petition initiating proceedings under this chapter is necessary.

2. That the child is an imminent danger to himself or herself or to others.

3. That probable cause exists to believe that the parent, guardian, or legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

4. That, if the child is an expectant mother who was taken into custody under s. 48.19 (1) (cm) or (d) 8., probable cause exists to believe that there is a substantial risk that if the child expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and to believe that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(bm) An extension under par. (b) may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in par. (b), the judge or circuit court commissioner shall order the child's immediate release from custody.

938.19 Taking a juvenile into custody.

(1) CRITERIA. A juvenile may be taken into custody under any of the following:
(a) A warrant.

(b) A capias issued by a court under s. 938.28.

(c) A court order if there is a showing that the welfare of the juvenile demands that the juvenile be immediately removed from his or her present custody. The order shall specify that the juvenile be held in custody under s. 938.207.

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

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

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

3. The juvenile is committing or has committed an act which is a violation of a state or federal criminal law.

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

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

6. The juvenile has violated a condition of court-ordered supervision or aftercare supervision administered by the department or a county department, a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

7. The juvenile has violated the conditions of an order under s. 938.21 (4) or of an order for temporary physical custody issued by an intake worker.

8. The juvenile has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the juvenile shall be released immediately under s. 938.20 (2) (ag) or as soon as reasonably possible under s. 938.20 (2) (b) to (g).

10. The juvenile is absent from school without an acceptable excuse under s. 118.15.

(1m) TRUANCY. A juvenile who is absent from school without an acceptable excuse under s. 118.15 may be taken into custody by an individual designated under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the juvenile resides, or the juvenile's parent, guardian, or legal custodian, requests that the juvenile be taken into custody. The request shall specifically identify the juvenile.

(2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN. When a juvenile is taken into physical custody under this section, the person taking the juvenile into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Indian custodian of the juvenile by the most practical means. The person taking the juvenile into custody shall continue such attempt until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified, or the juvenile is
delivered to an intake worker under s. 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker before the parent, guardian, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified.

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

938.20(2)(d) If the juvenile is a runaway, the person who took the juvenile into custody may release the juvenile to a home under s. 48.227.

938.205 Criteria for holding a juvenile in physical custody.

(1) CRITERIA. A juvenile may be held under s. 938.207, 938.208, or 938.209 (1) if the intake worker determines that there is probable cause to believe the juvenile is within the jurisdiction of the court and if probable cause exists to believe any of the following:

(a) That the juvenile will commit injury to the person or property of others if not held.

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

(c) That the juvenile will run away or be taken away so as to be unavailable for proceedings of the court or its officers, proceedings of the division of hearings and appeals in the department of administration for revocation of aftercare supervision, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534.

938.208 Criteria for holding a juvenile in a juvenile detention facility. A juvenile may be held in a juvenile detention facility if the intake worker determines that any of the following conditions applies:

(1) DELINQUENT ACT AND RISK OF HARM OR RUNNING AWAY. Probable cause exists to believe that the juvenile has committed a delinquent act and either presents a substantial risk of physical harm to another person or a substantial risk of running away so as to be unavailable for a court hearing, a revocation of aftercare supervision hearing, or action by the department or county department relating to a violation of a condition of the juvenile's placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile's participation in the intensive supervision program under s. 938.534. For juveniles who have been adjudged delinquent, the delinquent act referred to in this section may be the act for which the juvenile was adjudged delinquent. If the intake worker determines that any of the following conditions applies, the juvenile is considered to present a substantial risk of physical harm to another person:

(a) Probable cause exists to believe that 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), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2), if committed by an adult.

(b) Probable cause exists to believe that the juvenile 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.

(c) Probable cause exists to believe that 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.

(2) Runaway from another state or secure custody. Probable cause exists to believe that the juvenile is a fugitive from another state or has run away from a juvenile correctional facility or a secured residential care center for children and youth and there has been no reasonable opportunity to return the juvenile.

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

(4) Runaway from nonsecure custody. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker under s. 938.207 or by the court under s. 938.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

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

(6) Subject to jurisdiction of adult court. Probable cause exists to believe that the juvenile is subject to the jurisdiction of the court of criminal jurisdiction under s. 938.183 (1) and is under 15 years of age.

938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility.

(1) County jail. Subject to s. 938.208, a county jail may be used as a juvenile detention facility if the criteria under either par. (a) or (b) are met:

(a) There is no other juvenile detention facility approved by the department or a county which is available and all of the following conditions are met:

1. The jail meets the standards for juvenile detention facilities established by the department.
2. The juvenile is held in a room separated and removed from incarcerated adults.

3. The juvenile is not held in a cell designed for the administrative or disciplinary segregation of adults.

4. Adequate supervision is provided.

5. The court reviews the status of the juvenile every 3 days.

(b) The juvenile presents a substantial risk of physical harm to other persons in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a hearing and may be transferred only upon a court order.

(2m) MUNICIPAL LOCKUP.

(a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her hearing under s. 938.21 (1) (a).

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

(b) The department shall promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules shall be designed to protect the health, safety and welfare of the juveniles held in those facilities.

(3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.

938.21 Hearing for juvenile in custody.

(1) HEARING; WHEN HELD.

(a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the court within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 938.25 or a request for a change in placement under s. 938.357, a request for a revision
of the dispositional order under s. 938.363, or a request for an extension of a dispositional order under s. 938.365 shall be filed, except that no petition or request need be filed if a juvenile is taken into custody under s. 938.19 (1) (b) or (d) 2., 6., or 7. or if the juvenile is a runaway from another state, in which case a written statement of the reasons for holding a juvenile in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition, request, or statement has been filed at the time of the hearing, the juvenile shall be released except as provided in par. (b). The court shall grant a rehearing upon request of a parent not present at the hearing for good cause shown.

(b) If no petition or request has been filed by the time of the hearing, a juvenile may be held in custody with the approval of the court for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. If a petition or request is not filed within the 48-hour extension period under this paragraph, the court shall order the juvenile's immediate release from custody.

2) PROCEEDINGS CONCERNING DELINQUENT JUVENILES.

(a) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.12 or 938.13 (12) or (14) shall be conducted according to this subsection.

(am) A juvenile held in a nonsecure place of custody may waive in writing his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted upon the request of the juvenile or any other interested party for good cause shown. Any juvenile transferred to a juvenile detention facility shall thereafter have a rehearing under this section.

(b) A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and legal custodian and to the juvenile under s. 938.20 (8).

(c) Prior to the commencement of the hearing, the court shall inform the juvenile of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23 regardless of ability to pay if the juvenile is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the court, the right to confront and cross-examine witnesses, and the right to present witnesses.

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

(e) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that
information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3) PROCEEDINGS CONCERNING JUVENILES IN NEED OF PROTECTION OR SERVICES.

(a) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.13 (4), (6), (6m), or (7) shall be conducted according to this subsection.

(b) If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the juvenile's parent, guardian, legal custodian, and Indian custodian and to the juvenile if he or she is 12 years of age or older under s. 938.20 (8).

(d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross-examine witnesses and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b).

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

(f) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3m) PARENTAL NOTICE REQUIRED. If the juvenile has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the juvenile's parents of the possibility of disclosure of the identity of the juvenile and the parents, of the juvenile's police records and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents and of the parents' potential liability for acts of their juveniles. If the court is unable to provide the notice before commencement of the hearing, it shall provide the juvenile's parents with the specified information in writing as soon as possible after the hearing.
(4) ORDER TO CONTINUE IN CUSTODY. If the court finds that the juvenile should be continued in custody under the criteria of s. 938.205, the court shall enter one of the following orders:

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

(b) Order the juvenile held in an appropriate manner under s. 938.207, 938.208 or 938.209 (1).

(4m) ELECTRONIC MONITORING. An order under sub. (4) (a) or (b) may include a condition that the juvenile be monitored by an electronic monitoring system.

(5) ORDERS IN WRITING.

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

(b) An order relating to a juvenile held in custody outside of his or her home shall also include all of the following:

1. 
   a. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

   b. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

   c. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.

   d. If the juvenile is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether reasonable efforts were made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, a finding as to whether reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date on which the order is granted.
2. If the juvenile is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the juvenile is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the juvenile.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

(c) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(e) 1. In this paragraph, "adult relative" means a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a juvenile, whether by blood, marriage, or legal adoption, who has attained 18 years of age.

2. The court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult relatives of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all other adult individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless
the juvenile is returned to his or her home within that period. The county department or agency may not
provide that notice to a person named under sub. (2) (e) or (3) (f) or to an adult relative if the county
department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if
the juvenile were placed with that person or adult relative. The notice shall include all of the following:

a. A statement that the juvenile has been removed from the custody of the juvenile's parent.

b. A statement that explains the options that the person provided with the notice has under state or
federal law to participate in the care and placement of the juvenile, including any options that may be lost
by failing to respond to the notice.

c. A description of the requirements to obtain a foster home license under s. 48.62 or to receive
kinship care or long-term kinship care payments under s. 48.57 (3m) or (3n) and of the additional services
and supports that are available for juveniles placed in a foster home or in the home of a person receiving
those payments.

d. A statement advising the person provided with the notice that he or she may incur additional
expenses if the juvenile is placed in his or her home and that reimbursement for some of those expenses
may be available.

e. The name and contact information of the agency that removed the juvenile from the custody of the
juvenile's parent.

(6) AMENDMENT OF ORDER. An order under sub. (4) (a) may be amended at any time, with notice, so
as to place the juvenile in another form of custody for failure to conform to the conditions originally
imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208.

(7) DEFERRED PROSECUTION. If the court determines that the best interests of the juvenile and the
public are served, the court may enter a consent decree under s. 938.32 or dismiss the petition and refer
the matter to the intake worker for deferred prosecution in accordance with s. 938.245.

938.067 Powers and duties of intake workers. To carry out the objectives of this chapter, intake
workers shall do all of the following:

(1) SCREENING. Provide intake services 24 hours a day, 7 days a week, for the purpose of screening
juveniles taken into custody and not released under s. 938.20 (2).

(2) INTERVIEWING. Interview, if possible, any juvenile who is taken into physical custody and not
released, and, if appropriate, other available concerned parties. If the juvenile cannot be interviewed, the
intake worker shall consult with the juvenile's parent or a responsible adult. No juvenile may be placed in
a juvenile detention facility unless the juvenile has been interviewed in person by an intake worker,
except that if the intake worker is in a place which is distant from the place where the juvenile is or the
hour is unreasonable, as defined by written court intake rules, and if the juvenile meets the criteria under
s. 938.208, the intake worker, after consulting by telephone with the law enforcement officer who took
the juvenile into custody, may authorize the secure holding of the juvenile while the intake worker is en
route to the in-person interview or until 8 a.m. of the morning after the night on which the juvenile was taken into custody.

(3) WHETHER JUVENILE SHOULD BE HELD. Determine whether the juvenile shall be held under s. 938.205 and policies promulgated under s. 938.06 (1) or (2).

(4) WHERE JUVENILE SHOULD BE HELD. If the juvenile is not released, determine where the juvenile shall be held.

(5) CRISIS COUNSELING. Provide any necessary crisis counseling during the intake process.

(6) REQUEST FOR PETITION; DEFERRED PROSECUTION. Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into deferred prosecution agreements under policies promulgated under s. 938.06 (1) or (2).

(6g) VICTIMS' RIGHTS. Provide information and notices to and confer with victims as required under s. 938.346 (1m).

(6m) MULTIDISCIPLINARY SCREEN. Conduct the multidisciplinary screen in counties that have a pilot program under s. 938.547.

(7) REFERRALS. Make referrals of cases to other agencies if their assistance is needed or desirable.

(8) INTERIM RECOMMENDATIONS. Make interim recommendations to the court concerning juveniles awaiting final disposition under s. 938.355.

(8m) TAKING JUVENILES INTO CUSTODY. Take juveniles into custody under ss. 938.355 (6d) (a), (b) and (c) and 938.534 (1) (b) and (c).

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

938.21 Hearing for juvenile in custody.

(1) HEARING; WHEN HELD.

(a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the court within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 938.25 or a request for a change in placement under s. 938.357, a request for a revision of the dispositional order under s. 938.363, or a request for an extension of a dispositional order under s. 938.365 shall be filed, except that no petition or request need be filed if a juvenile is taken into custody under s. 938.19 (1) (b) or (d) 2., 6., or 7. or if the juvenile is a runaway from another state, in which case a written statement of the reasons for holding a juvenile in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition, request, or statement has been filed at
the time of the hearing, the juvenile shall be released except as provided in par. (b). The court shall grant a rehearing upon request of a parent not present at the hearing for good cause shown.

(b) If no petition or request has been filed by the time of the hearing, a juvenile may be held in custody with the approval of the court for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. If a petition or request is not filed within the 48-hour extension period under this paragraph, the court shall order the juvenile's immediate release from custody.

(2) PROCEEDINGS CONCERNING DELINQUENT JUVENILES.

(a) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.12 or 938.13 (12) or (14) shall be conducted according to this subsection.

(a) A juvenile held in a nonsecure place of custody may waive in writing his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted upon the request of the juvenile or any other interested party for good cause shown. Any juvenile transferred to a juvenile detention facility shall thereafter have a rehearing under this section.

(b) A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing. Prior notice of the hearing shall be given to the juvenile's parent, guardian, and legal custodian and to the juvenile under s. 938.20 (8).

(c) Prior to the commencement of the hearing, the court shall inform the juvenile of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23 regardless of ability to pay if the juvenile is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the court, the right to confront and cross-examine witnesses, and the right to present witnesses.

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

(e) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3) PROCEEDINGS CONCERNING JUVENILES IN NEED OF PROTECTION OR SERVICES.
Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.13 (4), (6), (6m), or (7) shall be conducted according to this subsection.

The parent, guardian, legal custodian, or Indian custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the juvenile's parent, guardian, legal custodian, and Indian custodian and to the juvenile if he or she is 12 years of age or older under s. 938.20 (8).

Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross-examine witnesses and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b).

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

If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

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

ORDER TO CONTINUE IN CUSTODY. If the court finds that the juvenile should be continued in custody under the criteria of s. 938.205, the court shall enter one of the following orders:
(a) Place the juvenile with a parent, guardian, legal custodian, or other responsible person and may impose reasonable restrictions on the juvenile's travel, association with other persons, or places of abode during the period of placement, including a condition requiring the juvenile to return to other custody as requested; or subject the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other responsible person which may be necessary to ensure the safety of the juvenile.

(b) Order the juvenile held in an appropriate manner under s. 938.207, 938.208 or 938.209 (1).

(4m) ELECTRONIC MONITORING. An order under sub. (4) (a) or (b) may include a condition that the juvenile be monitored by an electronic monitoring system.

(5) ORDERS IN WRITING.

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

(b) An order relating to a juvenile held in custody outside of his or her home shall also include all of the following:

1. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

2. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

3. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.

4. If the juvenile is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether reasonable efforts were made to prevent the removal of the juvenile from the home, while assuring that the juvenile's health and safety are the paramount concerns, a finding as to whether reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date on which the order is granted.

2. If the juvenile is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the
juvenile is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the juvenile.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

(e) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(e)

1. In this paragraph, "adult relative" means a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a juvenile, whether by blood, marriage, or legal adoption, who has attained 18 years of age.

2. The court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult relatives of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all other adult individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from the custody of the juvenile's parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (2) (e) or (3) (f) to an adult relative if the county
department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if
the juvenile were placed with that person or adult relative. The notice shall include all of the following:

a. A statement that the juvenile has been removed from the custody of the juvenile's parent.

b. A statement that explains the options that the person provided with the notice has under state or
federal law to participate in the care and placement of the juvenile, including any options that may be lost
by failing to respond to the notice.

c. A description of the requirements to obtain a foster home license under s. 48.62 or to receive
kinship care or long-term kinship care payments under s. 48.57 (3m) or (3n) and of the additional services
and supports that are available for juveniles placed in a foster home or in the home of a person receiving
those payments.

d. A statement advising the person provided with the notice that he or she may incur additional
expenses if the juvenile is placed in his or her home and that reimbursement for some of those expenses
may be available.

e. The name and contact information of the agency that removed the juvenile from the custody of the
juvenile's parent.

(6) AMENDMENT OF ORDER. An order under sub. (4) (a) may be amended at any time, with notice, so
as to place the juvenile in another form of custody for failure to conform to the conditions originally
imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208.

(7) DEFERRED PROSECUTION. If the court determines that the best interests of the juvenile and the
public are served, the court may enter a consent decree under s. 938.32 or dismiss the petition and refer
the matter to the intake worker for deferred prosecution in accordance with s. 938.245.
**48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services.** If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 54, or 115 to be developmentally disabled, mentally ill, or to have a disability specified in s. 115.76 (5) in facilities that exclusively treat those categories of children…

**938.135 Referral of juveniles to proceedings under ch. 51 or 55.**

1. **Juvenile with developmental disability, mental illness, or alcohol or drug dependency.** If a juvenile alleged to be delinquent or in need of protection or services is before the court and appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the court may proceed under ch. 51 or 55.

2. **Admissions, placements, and commitments to inpatient facilities.** Any voluntary or involuntary admissions, placements, or commitments of a juvenile made in or to an inpatient facility, as defined in s. 51.01 (10), other than a commitment under s. 938.34 (6) (am), are governed by ch. 51 or 55.

**PROCEDURES**

In Wisconsin, procedures for obtaining services for juveniles believed to be mentally ill, alcohol dependent, or developmentally disabled are outlined in Chapters 51 and 55. Although the provisions of ss. 48.19 and 938.19 allow law enforcement officers to take juveniles into custody when they are exhibiting behaviors that indicate mental illness, there are specific provisions that provide for appropriate placement of such juveniles. Wis. Stats. Sec 51.15 details the procedures for how juveniles can be the subject of proceedings.

The compliance monitor shall maintain knowledge of the facilities that receive juveniles alleged to be mentally ill. Inspections of logs should be scheduled to ensure that the juveniles placed there are placed pursuant to Chapters 51 and 55 and not as the result of a Chapter 48 or 938 disposition.
MENTAL HEALTH FACILITIES

APPLICABLE FEDERAL RULES

Secure Mental Health Treatment Units

A juvenile committed to a mental health facility under a separate state law governing civil commitment of individuals for mental health treatment or evaluation would be considered outside the class of juvenile status offenders and non-offenders. For monitoring purposes, this distinction does not permit placement of status offenders or non-offenders in a secure mental health facility where the court is exercising its juvenile status offender or non-offender jurisdiction. The state must ensure that juveniles alleged to be or found to be juvenile status offenders or non-offenders are not committed under state mental health laws to circumvent the intent of DSO.

There are no restrictions to placing delinquent offenders in a mental health treatment unit. The separation requirement does not apply if the juvenile and adults are held in a mental health facility solely because of a mental health civil commitment.

APPLICABLE WISCONSIN STATUTES

51.15  Emergency detention.

(1)  BASIS FOR DETENTION.

(a)  A law enforcement officer or other person authorized to take a child into custody under ch. 48 or to take a juvenile into custody under ch. 938 may take an individual into custody if the officer or person has cause to believe that the individual is mentally ill, is drug dependent, or is developmentally disabled…

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.
Disposition of child or unborn child of child expectant mother adjudged in need of protection or services. If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 54, or 115 to be developmentally disabled, mentally ill, or to have a disability specified in s. 115.76 (5) in facilities that exclusively treat those categories of children…

Referral of juveniles to proceedings under ch. 51 or 55.

(1) Juvenile with developmental disability, mental illness, or alcohol or drug dependency. If a juvenile alleged to be delinquent or in need of protection or services is before the court and appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the court may proceed under ch. 51 or 55.

(2) Admissions, placements, and commitments to inpatient facilities. Any voluntary or involuntary admissions, placements, or commitments of a juvenile made in or to an inpatient facility, as defined in s. 51.01 (10), other than a commitment under s. 938.34 (6) (am), are governed by ch. 51 or 55.

PROCEDURES

In Wisconsin, procedures for obtaining services for juveniles believed to be mentally ill, alcohol dependent, or developmentally disabled are outlined in Chapters 51 and 55. Although the provisions of ss. 48.19 and 938.19 allow law enforcement officers to take juveniles into custody when they are exhibiting behaviors that indicate mental illness, there are specific provisions that provide for appropriate placement of such juveniles. Wis. Stats. Sec 51.15 details the procedures for how juveniles can be the subject of proceedings.

The compliance monitor shall maintain knowledge of the facilities that receive juveniles alleged to be mentally ill. Inspections of logs should be scheduled to ensure that the juveniles placed there are placed pursuant to Chapters 51 and 55 and not as the result of a Chapter 48 or 938 disposition.
VALID COURT ORDER

The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, defines the valid court order exception as being an available secure holding of a status offender who, having been brought before a juvenile court and made subject of a juvenile court order, has been advised of the full due process rights guaranteed by the United States Constitution, is made subject to a juvenile court order. Should the juvenile violate a term of the order about which the juvenile was informed in court, a secure hold is available under limited conditions.

[Note must be made that status offenders who violate a valid court order cannot be held securely in an adult jail or lockup for any length of time].

For the purpose of determining whether a VCO exists and a juvenile has been found in violation of that order, all of the following conditions must be present prior to secure incarceration:

- The juvenile must be brought before a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

- The court must have entered a judgment and/or remedy (order) in accord with established legal principles based on the facts after a hearing which observes proper procedures.

- The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile’s attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

- All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile found to have violated a valid court order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

- Prior to and during the violation hearing, the following due process rights must be provided:
1. The right to have the charges against the juvenile in writing served upon the juvenile in a reasonable time before the hearing;
2. The right to a hearing before the court;
3. The right to an explanation of the nature and consequences of the proceeding;
4. The right to legal counsel, and the right to have such counsel appointed by the court if indigent.
5. The right to confront witnesses;
6. The right to have a transcript of the proceedings;
7. The right to present witnesses; and
8. The right of appeal to an appropriate court.

- In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order and the applicable due process rights were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that:
  1. reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order;
  2. determines the reasons for the juvenile’s behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate.
  3. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

A non-offender such as a dependent and neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

The presence of all of the above elements must be verified by the Compliance Monitor before the event qualifies as a Valid Court Order exception. If all are not present, the detention constitutes a violation.
NATIVE AMERICAN TRIBES

APPLICABLE FEDERAL RULES

Monitoring Facilities on Native American Reservations

The sovereign authority of Native American tribes with regard to civil and criminal jurisdiction over acts committed on a reservation varies from state to state and, in some states, from tribe to tribe within a state. Where a Native American tribe exercises jurisdiction over juvenile offenders through an established tribal court and operates correctional institutions for juvenile and adult offenders and these activities are not subject to state law (i.e., the functions are performed under the sovereign authority of the tribal entity), the state cannot mandate tribal compliance with the core requirements. Therefore, where the state has no authority to regulate or control the law enforcement activities of a sovereign Native American tribal reservation, facilities that are located on such reservations are not required to be included in the inspection cycle.

WISCONSIN APPLICATION

There are eleven federally recognized tribes in Wisconsin, none of which currently maintain a facility for holding delinquents or other offenders. There has been discussion regarding possible funding and construction of facilities. The compliance monitor must continue to note developments, including whether any constructed facility contracts with neighboring jurisdictions to house non-Native youth pursuant to orders of non-tribal courts.
ATTACHMENTS
Today’s Date ____________________________

Officer/Administrator completing this form ____________________________________________________________

Jail □ or Lockup □ Name & Location of Facility ______________________________________________________

1. Is your facility approved by the Wisconsin Department of Corrections to hold juveniles under the age of 17? Yes [ ] No [ ]
2. Did your facility hold any persons under the age of 17 January 1, 2011 to December 31, 2011? Yes [ ] No [ ]
3. Did your facility hold any status/non-offenders under the age of 18 January 1, 2011 to December 31, 2011? Yes [ ] No [ ]

*Please refer to the attached definitions when answering questions 2 and 3.

If you answered yes to question 2 or 3 please list each hold in the box below.

<table>
<thead>
<tr>
<th>Case Number</th>
<th>D.O.B.</th>
<th>Date &amp; Time Admitted</th>
<th>Date &amp; Time Released</th>
<th>Statute</th>
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<tbody>
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<td>1.</td>
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ATTACH ADDITIONAL SHEETS IF NEEDED

Please contact Mike Derr at (608) 264-6386 or mike.derr@wisconsin.gov or go to http://oja.wi.gov/ if you have any questions pertaining to the JJDP Act or Wisconsin’s federal compliance monitoring program.
WISCONSIN COMPLIANCE MONITORING
FACILITY INFORMATION FORM

FACILITY INFORMATION:

Facility Name ______
On-Site Visit Date: _____ County: _____
Monitor: ______
Collocated: Yes ☐ No ☐
Facility Mailing Address: ______
Physical Address: ______
Name and Title of Administrator:_____
Contact Name: ______
JSDR Data entered by (Name and title) ______
Contact Phone:_____ ContactFax: ______
Contact E-Mail: ______

CLASSIFICATION INFORMATION:

Type of Facility: Jail ☐; Lockup ☐; Juvenile Detention Center ☐;
       Court Holding ☐; Juvenile Correctional Facility ☐; Collocated
       ☐; Other ☐

Classification:
☐ Secure, Public
☐ Secure, Private
☐ Non-Secure, Public
☐ Non-Secure, Private
# SIGHT AND SOUND INFORMATION

<table>
<thead>
<tr>
<th>Facility Area</th>
<th>Level of Separation</th>
<th>Narrative/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Booking/Admission</td>
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<tr>
<td>Housing</td>
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<td>Dining</td>
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<td>Recreation</td>
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<td>Vocation/Work</td>
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<td>Visiting</td>
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<td>Transportation</td>
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<td>Medical/Dental</td>
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<td>Segregation</td>
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<tr>
<td>Hallways/Sallyports</td>
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</tbody>
</table>

Use the following code table below to describe the level of separation above. Walk through facility as if you were a juvenile being processed and detained. Obtain a facility layout for future reference.

<table>
<thead>
<tr>
<th>CODE</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Adult inmates and juveniles can have physical, visual and aural contact with each other (NO SEPARATION)</td>
</tr>
<tr>
<td>2</td>
<td>Adult inmates and juveniles cannot have physical contact with each other, but they can see or hear each other (PHYSICAL SEPARATION)</td>
</tr>
<tr>
<td>3</td>
<td>Conversation possible between adult inmates and juveniles although they cannot see each other or have physical contact with each other (SIGHT SEPARATION)</td>
</tr>
<tr>
<td>4</td>
<td>Adult inmates and juveniles can see each other on a sustained basis but no conversation is possible and they can not have physical contact with each other (SOUND SEPARATION)</td>
</tr>
<tr>
<td>5</td>
<td>Adult inmates and juveniles within the same facility cannot have physical contact with each other and no sustained sight contact or conversation is possible (SIGHT AND SOUND SEPARATION)</td>
</tr>
<tr>
<td>6</td>
<td>Adult inmates and juveniles are not placed in the same facility (ENVIRONMENTAL SEPARATION)</td>
</tr>
<tr>
<td>7</td>
<td>Juveniles are not held securely in the facility (DO NOT HOLD)</td>
</tr>
</tbody>
</table>

Does the facility utilize adult trustees for any juvenile services?  [ ] Yes [ ] No  
(Examples; Serving food, cleaning, etc……)

If yes, describe the use of adult trustees and how physical separation and sustained sight and sound separation is maintained.
WISCONSIN COMPLIANCE MONITORING
FACILITY INFORMATION FORM

RECORDS INFORMATION (if juveniles are held securely, their records must contain the following)

☐ Name or ID number
☐ DOB or age
☐ Gender
☐ Race/Ethnicity
☐ Most Serious Charge/Offense
☐ County of Residence
☐ Date/Time of Admission
☐ Date/Time of Release
☐ Release Placement
☐ Time to/returned from court (if applicable)

MONITORING CHECKLIST:

✦ Obtain Facility Layout Showing Locations for Secure and Non-Secure Holding ✿
✦ Obtain Relevant Policies and Procedures ✿
✦ Obtain Records Sample ✿
✦ Other Information Provided (list) ______

INTERVIEW INFORMATION (If more space needed, use back of form. If other compliance issues arise, document)

Who collects admissions logs? ______

Where are delinquents held? ______

Where are status and non-offenders held? ______

Is there a separate Court Holding? if so, location? ______

Who, if anyone, does intake screening? ______

What jail removal programs are available and who provides? ______

Are other placements available in County? (List secure and non-secure) ______

Facility catchment area:______
WISCONSIN COMPLIANCE MONITORING
FACILITY INFORMATION FORM

Are original jurisdiction or waived juveniles held in this facility? ☐ Yes, ☐ No
Under what circumstances? _____

Any compliance issues, problems, concerns? _____

Solutions Suggested: _____

New correctional facilities being planned for this area? (Use back of form) _____

Other information? _____

Future Activities Needed _____

Number of juveniles held within the year? _____

Jail Removal Violations? ☐ Yes ☐ No
If yes, please list name, court case #, reason for hold, and why a violation:

Deinstitutionalization of Status Offender violations? ☐ Yes ☐ No
If yes, please list:

Sight and Sound Separation violations? ☐ Yes ☐ No
If yes, please list:

Valid Court Orders? ☐ Yes ☐ No
If yes, please list:
Collocated Facility Checklist

Name of Facility: ______
Facility Address: ______
Contact Name: ______
Contact Phone, Fax and E-Mail: ______

Separate Physical Plant

Separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Total separation must be achieved in residential areas. In program areas, e.g., educational, vocational, and recreational, separation must be achieved either through architectural design or through time-phased use of areas as directed by written policies and procedures.

1. A legible floor plan of the facility is provided. ☐

2. All relevant areas of the physical plant are clearly labeled. ☐

3. The floor plan clearly indicates total spatial separation in the residential areas of the respective facilities. ☐

4. The floor plan or policies and procedures clearly indicate either total spatial separation or time-phased use of the following areas:

   ☐ Entrance
   ☐ Counseling
   ☐ Intake/Processing/Admissions
   ☐ Medical
   ☐ Dining
   ☐ Religious Services
   ☐ Indoor Recreation
   ☐ Visitation
   ☐ Outdoor Recreation
   ☐ Other Programs
   ☐ Education/Vocation

5. Documentation clearly describing resident movement, both scheduled and emergency exits. ☐
6. Describe any activities of adult trustees working on the grounds or in the facility where contact is possible. □

**Separate Programming**

*Total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities.*

1. Complete narrative description of all programs that will be available for juveniles, and where the programs will be conducted. □

2. There is an independent and comprehensive operational plan for the collocated facility which provides a full range of separate program services. □

3. Address health care and the procedures for providing necessary services. □

4. Note specialized training for program staff in serving juveniles. □
Separate Staff

*If the state will use the same staff to serve both the adult and juvenile populations, there is in effect in the state a policy that requires individuals who work with both juveniles and adult inmates to be trained and certified to work with juveniles;*

1. Do the same staff work with both adult inmates and juveniles inmates?

2. The collocated juvenile facility organizational chart, and/or other documentation, clearly indicate a permanent, full-time manager or superintendent for the juvenile facility. ☐

3. The collocated juvenile facility’s policies, organizational chart, and/or other documentation clearly indicate that adult residents (trustees) will never be permitted to supervise or provide direct services for juvenile residents, e.g., serving meals, dispensing reading materials, janitorial services in the juvenile area. ☐

Licensing

*In states that have established standards or licensing requirements for secure juvenile detention facilities, the collocated juvenile facility must meet the standards and be licensed as appropriate.*

1. Does this facility comply with established state standards for operation? ☐

2. Is this facility licensed by the state to operate as a juvenile detention center? ☐
DEFINITIONS

1. Youth are considered to be “held” and should be reported as “held” if they enter the secure perimeter pursuant to a temporary physical custody request/referral by law enforcement, a citation, an arrest due to warrant or Capias or other arrest, or by order of the court. Please note that handcuffing a juvenile to a cuffing ring/bar or locking a juvenile into an interview room is a secure hold. Youth who enter the secure perimeter for the sole purpose of “booking” are not considered to be “held”.

2. The secure perimeter is that boundary within the facility that outlines the secure confinement area. Typically this is the area where cells and booking is located.

3. “Booking” is defined as the set of activities that may be conducted to properly identify, photograph, conduct screenings of, and fingerprint a juvenile. These activities may be conducted within a secure booking area if that is all that is available, the activities are conducted under constant visual supervision by staff, and the juvenile remains in the area only long enough for those activities to be accurately completed. A general guide is that booking should generally be completed within one hour.

4. Documentation for purposes of holding/booking should include: Name, DOB, Gender, Race, Most Serious charge for which the juvenile is held/booked, county of residence, Date/Time of Hold/Booking (start and end), Where/To Whom was the juvenile released.

5. “Status offender” (alleged or adjudicated) includes juveniles under the age of 18 who are truants, curfew violations, runaways, underage drinkers, tobacco violations, non-criminal traffic offenses, and other offenses that if committed by an adult would not be a criminal act.

6. “Non offenders” are children under age 18 who have not committed any violation and are basically abused, neglected, abandoned, or otherwise in need of protection or services.
Juvenile Commits Status offense

Juv. Found Adj. JIPS/CHIPS

Due process rights

Rules of supervision/ go to school/ do not runaway

Juv. violates valid court order

Sanction hearing

Capias/warrant issued

Stays at home

Sanctioned to JDC

Juvenile Det. Center

w/in 24 hrs interview juv.

w/in 48 assessment report

Court hearing makes VCO finding

Required to Verify for VCO exception
Valid Court Order Checklist

File identifier:
Date reviewed:
Reviewed by:

All of the following must be present to claim the valid court order exception:

1. Was the juvenile brought before a court of competent jurisdiction?
   Yes ___ No ___ Date_________________ Time:______________

2. Did the court hold a hearing and issue an order?
   Yes ____  No     _____
   Date of Hearing______________  Time:______________

3. Did the order regulate future conduct of the juvenile?
   Yes___ No____

4. Prior to the issuance of the order, did the juvenile receive due process rights as guaranteed by the U.S. and Wisconsin constitutions?
   Yes____ No____

Did the rights include:

The right to have the charges against the juvenile in writing served upon him in a reasonable time before the hearing; ______
The right to a hearing before a court: _____
The right to an explanation of the nature and consequences of the proceedings; _____
The right to legal counsel, and the right to have such counsel appointed by the court if indigent; _____
The right to confront witnesses; _____
The right to present witnesses; ______
The right to have a transcript or record of the proceedings _____
The right of appeal to an appropriate court. _____

5. After allegedly violating the order, was the juvenile interviewed not later than 24 hours after being held by a representative of the appropriate public agency?
   Yes____ No____

6. Not later than 48 hours during which the juvenile was held, did the representative submit an assessment to the court that issued the order regarding the immediate needs of the juvenile?
   Yes____ No____

7. Did the court conduct a hearing within 48 hours of the juvenile’s placement in secure detention, excluding weekends and holidays, to determine whether there is probable cause to believe the juvenile violated the order and the appropriate placement of the juvenile pending disposition of the alleged violation?
   Yes___ No____ Date:_________________ Time:__________________

8. Did the court make a finding that the juvenile violated the prior order?
   Yes____ No____
Rural Exception Facility Verification

Facility: __________________________________________ County: ___________________

Address: ______________________________________________________________________

Contact Person: ______________________________________ Phone: ___________________

E-Mail: _____________________________________________ Fax: _____________________

Catchment Area Population: _____________________________ Non-MSA? _______________

Background:
The Juvenile Justice and Delinquency Prevention (JJDP) Act of 2002 allows adult jail and lockup facilities a Jail Removal “rural” exception, allowing the temporary detention beyond 6 hours, for juveniles accused of committing delinquent offenses. These juveniles may be securely detained beyond 6 hours only if awaiting an initial court appearance and if certain criteria are met. States must ensure that rural facilities will neither securely detain nor confine juveniles accused of status offenses and that accused juvenile delinquents are not securely detained for longer than 48 hours* (excluding weekends and holidays). Further, the State must demonstrate that each facility meets statutory criteria necessitating the secure detention of a juvenile delinquent in an adult jail or lockup.

Facility Specific Information:
Once the accused delinquent appears in court, if they are returned to this facility, they must be permanently removed from the secured setting within 6 hours. It is important to note that the rural exception does not apply to status offenders. Status offenders may not be held for any length of time in an adult jail or lockup.

All of the following conditions must be met in order for an accused juvenile delinquent, awaiting an initial court appearance, to be detained in this facility under the rural exception.

Please answer yes of no to the following statements/questions.

__________ The geographic area having jurisdiction over the juvenile is outside a metropolitan statistical area as defined by the Office of Management and Budget;

__________ Is there written documentation that this is a non-MSA area?

A determination has been made that there is “no existing alternative placement” pursuant to the criteria below (Note to States: the 2 suggested criteria below are not required; please insert your own criteria below should they differ from these suggestions.)

__________ There is no juvenile detention center within a two county or 100 mile radius; or

__________ There is no other alternative juvenile placement within a two county or 100 mile radius that can adequately house accused delinquent youth;

__________ The facility is located where conditions of distance to be traveled or the lack of highway, road or transportation do not allow for court appearances with in 48 hours (excluding weekends and holidays); or
The facility is located where conditions of safety exist (such as severe life threatening weather conditions that do not allow for safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

The State Compliance Monitor has determined that this facility meets or exceeds sight and sound separation standards. Please see attached Sight and Sound Separation Checklist.

There is in effect a state policy that requires individuals who work with both juveniles and adult inmates in collocated facilities to have been trained and certified to work with juveniles. Please see attached policy.

The state has youth-specific admission criteria (recommended per OJJDP’s Guidance Manual for Monitoring Facilities under the JJDP Act of 2002). Please see attached criteria.

Continuous visual supervision, either in person or via camera, will be provided during the duration of the juvenile’s confinement (recommended per OJJDP’s Guidance Manual for Monitoring Facilities under the JJDP Act of 2002). Please see attached memo or statement from facility.

Date submitted to OJJDP for approval.

State Compliance Monitor Date

Approve: Disapprove:

OJJDP CM Coordinator Date

Date received approval from OJJDP. Please include the written approval in the Facility File.

*Once approved the facility may detain a accused juvenile delinquent awaiting an initial court appearance for:

1. Up to 48 hours (excluding weekends and holidays).
2. If the facility is located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within 48 hours (excluding weekends and holidays) so that a brief (not to exceed 48 hours) delay is excusable; OR
3. If the facility is located where conditions adverse to safety exist (e.g., severe, life threatening weather conditions that do not allow for reasonable safe travel), the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.
4. These extended time periods cannot be used after the initial court appearance. After the appearance, the 6-hour exception applies and the juvenile could only be held for up to 6 hour prior to and for 6 hours after a court appearance.

(Please provide a copy of this form to the Facility Administrator and retain a copy for the Facility File)
“Rural” Exception Checklist

For the purposes of determining whether the removal “rural” exception can be claimed, all of the following conditions must be met:

Juvenile Identification: ________________________________

Facility

☐ Is the geographic area having jurisdiction over the juvenile outside a metropolitan statistical area, as defined by the Office of Management and Budget?

☐ Has a determination been made that there is no existing acceptable alternative placement for the juvenile pursuant to criteria developed by the state and approved by OJJDP?

☐ Has the facility been certified by the state to provide sight and sound separation of juveniles from adult inmates?

☐ Has the state provided documentation that these conditions have been met and received prior approval from OJJDP?

Incident

☐ Was the juvenile held an accused juvenile criminal-type offender held awaiting an initial court appearance?

☐ Was the accused juvenile criminal-type offender held more than 48 hours excluding Saturdays, Sundays and legal holidays?

☐ Was the accused juvenile criminal-type offender held more than 48 hours, but not more than an additional 48 hours, because of conditions of distance to be traveled or lack of roads or ground transportation?

or

☐ Was the accused juvenile criminal-type offender held more than 48 hours, but not more than an additional 24 hours after the time such conditions as adverse weather allow for reasonable safe travel?
## Determining Secure and Non-Secure Custody Status

The JJDP Act and core protections only apply when a juvenile is in secure custody. The following chart shows what constitutes secure and non-secure custody in an adult jail or lockup.

**Secure Custody:**

**JJDP Act Applies**

- If the room where the juvenile is being held is within a larger, secure perimeter; OR

- If the juvenile is cuffed to a cuffing rail or other stationary object; OR

- The room where the juvenile is being held is designated, set aside, or used as a secure detention area or is part of such an area; OR

- If the room contains construction features designed to physically restrict the movement and activities of persons in custody such as a lock on the door (whether or not the door is actually locked), a cuffing ring or rail, steel bars, etc.; OR

- If the room is designated or intended to be used for residential purposes; OR

- If the room contains delayed egress devices where the delay is greater than 30 seconds and the facility has not received written approval from the fire inspector to use the room; OR

- If the area is being used for purposes other than identification, investigation, processing and release to parents; OR

**Non-Secure Custody:**

**JJDP Act Does Not Apply**

- If the room where the juvenile is being held is not within a larger, secure perimeter; AND

- If the juvenile is not cuffed to a stationary object but may be handcuffed to him/herself; AND

- If the juvenile is in a room that is not designated, set aside, or used as a secure detention area and it is an unlocked multipurpose area such as a lobby, office or interrogation room; AND

- If the room contains no construction fixtures designed to physically restrict the movement and activities of persons in custody such as a lock on the door, a cuffing ring or rail, steel bars, etc.; AND

- If the room is not designated or intended to be used for residential purposes; AND

- If the room contains delayed egress devices that do not exceed 30 seconds and the facility has received written approval from the fire inspector to use the room; AND

- If the area is being used for purposes other than identification, investigation, processing and release to parents; OR...
If the area is used only for the purpose of identification, investigation, processing and release to parents, the juvenile is under constant supervision AND is sight and sound separated from adult inmates. If the juvenile is left in a secure booking area after being photographed and fingerprinted; OR

If the juvenile is booked in a secure booking area and is under continuous law enforcement visual supervision and is removed from the secure booking area (if there is no unsecure booking area available within the facility) to a nonsecure area immediately following the booking process for interrogation, contacting parents, or arranging placement or transportation; AND

If the juvenile is being processed through a secure booking area when an un-secure booking area is available within the facility. If the juvenile is under continuous visual law enforcement supervision and physical restriction of movement or activity is provided solely through facility staff (staff secure). A juvenile in a police car is considered to be in non-secure custody.
Compliance Monitor Site Inspections FAQs

Who is the Office of Justice Assistance (OJA)?

The Office of Justice Assistance (OJA) is the State Administering Agency for a number of federal criminal justice and homeland security grants, and serves as a policy coordinating entity for state and federal programs. OJA advises the Governor and Legislature on criminal justice and juvenile justice issues, and maintains compliance with federal requirements to ensure Wisconsin’s eligibility for federal funding.

What is the purpose of the compliance monitor visits?

In the Juvenile Justice and Delinquency Prevention Act (JJDPA), Congress created federal standards for the treatment of children and juveniles and provided financial incentives for states to comply with those standards. Whether states qualify for federal juvenile justice funds and how much money the states receive is conditioned on compliance with core requirements:

1. **Deinstitutionalization of Status Offenders (DSO)** mandates that offenses that only apply to minors whose acts would not be offenses at the age of majority (e.g., skipping school, running away, curfew violation) may not result in secure detention or confinement.

2. **Jail Removal** prohibits the detention of youth in adult jails or lock-ups except for limited times before or after a court hearing (6 hours), in rural areas (48 hours plus weekends and holidays), or in unsafe travel conditions.

3. **Sight and Sound Separation** prohibits visual or verbal contact between adults and youth in custody, indicating juveniles should not be housed next to adults; share dining rooms, recreation areas, or common hallways; or be placed in other circumstances that could expose them to threats or abuse from adult offenders.

The compliance monitor visits are to verify that facilities comply with these standards; provide recommendations to assist facilities in attaining and maintaining compliance; and report to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on the level of compliance with these requirements.

Doesn’t the Department of Corrections (DOC) conduct these inspections?

Although DOC inspectors and the compliance monitor collaborate and share information, they are responding to different requirements, and governed by different codes and laws.
STATUS OFFENDERS MAY NOT BE HELD WITHIN THIS SECURE AREA EXCEPT FOR IDENTIFICATION AND BOOKING

SAMPLE LIST OF STATUS OFFENSES

- Curfew violation
- Runaway
- Warrant for non-delinquent offense
- Underage consumption/possession of alcohol
- Curfew violation
- Possession of tobacco
- Truancy, Ch. 51 commitment
- Probationary driver’s license violation
STATUS OFFENDERS MAY NOT BE HELD WITHIN THIS SECURE AREA EXCEPT FOR IDENTIFICATION AND BOOKING

YOUTH CHARGED WITH CRIMES MAY NOT BE HELD WITHIN THIS SECURE AREA LONGER THAN 6 (SIX) HOURS

!ATTENTION!

OFFICE OF JUSTICE ASSISTANCE
Child Welfare Licensing

The Department of Children and Families (DCF), is responsible for licensing and monitoring the three types of children's residential programs listed below. The purpose of the program is to promote the health, safety and welfare of children in community care arrangements. The Department ensures that licensing requirements are met through on-going inspections of programs.

- **Group Foster Homes for Children**: facilities operating to provide 24-hour care for 5-8 children or youth. Licensed by DCF under Wisconsin Administrative Code DCF 57.

- **Residential Care Centers for Children and Youth**: child welfare agencies that provide residential care and treatment for children, youth and young adults. Licensed by DCF under Wisconsin Administrative Code DCF 52.

- **Shelter Care Facilities**: short-term, non-secure residential care and physical custody of children pending court action. Licensed by DCF under Wisconsin Administrative Code DCF 59.

In addition, the Department licenses private Child Placing Agencies, which are child welfare agencies licensed to place children in licensed family foster homes, treatment foster homes, and licensed group homes. Child placing agencies are licensed by DCF under Wisconsin Administrative Code DCF 54. Child placing agencies may license their own family foster homes (under DCF 56) and treatment foster homes (under DCF 38).
Disaggregating MIP Data from DSO and/or Jail Removal Violations: Guidance for States

Background:

Based on new guidance from OJJDP, states are not required to monitor juveniles accused of or adjudicated for minor in possession (MIP) of alcohol offenses as status offenders for purposes of compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. The Act defines a status offense as “an offense that would not be criminal if committed by an adult.” Possession of alcohol is a violation of state law if committed by persons 18 to 21 years of age in all states and the District of Columbia and therefore does not meet the definition of a “status offense” as defined by the Act.

OJJDP now considers youth charged with MIP (alcohol) offenses to be accused delinquent offenders. This has three important implications for states: (1) States may hold these youth securely in adult jails and lockups for up to 6 hours, provided they are separated from adult inmates; (2) Facilities that have received approval from OJJDP to use the “Rural Exception” in individual jails and lockups may now hold youth charged with MIP offenses in accordance with Rural Exception requirements; and (3) States may now hold youth charged with or adjudicated for MIP offenses indefinitely in secure detention and correctional facilities for juveniles. It is always a violation of the JJDP Act to sentence a juvenile offender to an adult jail or lockup. OJJDP will continue to count youth adjudicated for an MIP offense and sentenced to an adult jail or lockup to be a violation.

Steps to Disaggregate MIP Data:

To ensure that 2012 Formula Grant compliance determinations are made in a timely manner, all states must disaggregate MIP offenses from other violation data and submit this information to OJJDP by June 30, 2011. The disaggregated MIP data should be reported. The following is step-by-step guidance that states can use to prepare (or revise) the compliance data they submit to OJJDP for their 2012 Formula Grant compliance determination:

1. The state should determine, using its compliance data report from 2009 and/or 2010 (whichever the state will use for the FY 2012 Formula Grant compliance determination), whether any violations of DSO and/or Jail Removal were based on youth held for MIP offenses (MIP holds).

   **Note:** If the state reported no MIP holds as violations of DSO and/or Jail Removal, it must submit a letter to OJJDP stating that the data report submitted did not include MIP violations under DSO and/or Jail Removal guidelines. No further action is needed. OJJDP will use the original report to make its compliance determination for 2012.

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1 Or the state’s age of full criminal responsibility, if below 18 (e.g., New York age 16, Illinois age 17)
2. If the state reported MIP holds as DSO violations, it should:
   a. Identify the number of accused alcohol offenders held in adult jails and lockups for any period of time;
   b. Identify the number of accused alcohol offenders held in juvenile detention or juvenile correctional facilities longer than the 24-hour regulatory exception;
   c. Identify the number of adjudicated alcohol offenders held in juvenile detention or juvenile correctional facilities; and
   d. Identify the number of adjudicated alcohol offenders held in adult jails and lockups who were, for example, arrested on a warrant and held pending transportation or bonding. (It is always a violation of the JJDP Act to sentence a juvenile offender to an adult jail or lockup, and data for those juveniles should not be disaggregated.)

3. If the state reported MIP holds as Jail Removal violations, it should:
   a. Identify the number of accused alcohol offenders held in adult jails and lockups for any period of time, and
   b. Identify the number of adjudicated alcohol offenders held in adult jails and lockups who were, for example, arrested on a warrant and held pending transportation or bonding. (It is always a violation of the JJDP Act to sentence a juvenile offender to an adult jail or lockup, and data for those juveniles should not be disaggregated.)

   **Note:** The compliance monitoring technical assistance tool will automatically remove from the Jail Removal count those youth counted as violations of both DSO and Jail Removal.

4. To conduct the disaggregation, a state must review the admitting offense data for adult jails, adult lockups, juvenile detention centers, and juvenile correctional facilities to determine which juveniles fall into the categories listed in 2 a–d and 3 a and b.

5. All states that reported MIP holds as violations of DSO and/or Jail Removal in the data report they submitted for their 2012 Formula Grant compliance determination must revise and resubmit their reports to OJJDP by June 30, 2011. This is the case even if disaggregating the MIP data does not substantially change the DSO and/or Jail Removal *de minimis* rate of compliance. A revised report is required because OJJDP compares compliance violation rates year to year.

6. The deadline for submission to OJJDP is June 30, 2011.

   **For More Information, Contact:**

Jeff Slowikowski, Acting Administrator
jeff.slowikowski@usdoj.gov
202-307-5911

Elissa Rumsey, Compliance Monitoring Coord.
elissa.rumsey@usdoj.gov
202-616-9279

Office of Juvenile Justice and Delinquency Prevention
www.ojjdp.gov
MEMORANDUM

TO: State Agency Directors
    Juvenile Justice Specialists
    Compliance Monitors
    State Advisory Group Chairs

FROM: Jeff Slowikowski
      Acting Administrator, OJJDP

DATE: March 17, 2011

SUBJECT: Status Offenders and the Juvenile Justice and Delinquency Prevention Act –
          Followup on Data Reporting for Annual Core Requirements Determinations

In October 2010, I issued a memorandum regarding a recent review that the Office of Justice
Programs' Office of the General Counsel (OGC) conducted that raised questions about the
deinstitutionalization of status offenders (DSO) core requirement as it applies to juveniles
accused of or adjudicated for minor in possession of alcohol (MIP) offenses (Section 223(a)(11)
of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended). As stated
in that memorandum, OJJDP has always understood that the intent of the legislators in passing
the JJDP Act was to ensure that juveniles accused of or adjudicated for such offenses are never
securely detained in juvenile or adult facilities. To that end, OJJDP has been working with
Congressional staff to amend the JJDP Act to include MIP offenses as status offenses subject to
the DSO core requirement. Unfortunately, these efforts have been unsuccessful to date.

OJJDP will continue to work with Congressional staff to amend the JJDP Act this year.
However, until we achieve a statutory change, OJJDP is providing states with the following
guidance regarding compliance monitoring and data submissions:

➢ Juveniles who have been accused of or adjudicated for alcohol violations, which would
   not be violations of the law if committed by an adult over the age of 21, will no longer be
   considered status offenders and would not need to be reported as violations of the DSO
core requirement. Therefore, OJJDP asks that state compliance monitors disaggregate these youth for data collection purposes. We request that states continue to count and track these alcohol violations, but count them separately from other DSO violations.

➢ Compliance data that states submit to OJJDP for fiscal year (FY) 2012 funding determinations should not include MIP or similar type alcohol offenses as violations of the DSO core requirement.

➢ Some states have already submitted their compliance data for OJJDP’s FY 2012 determination. It is anticipated that every state will need to reassess the number of DSO violations reported and submit revised data that disaggregates the juvenile MIP and alcohol offense data.

OJJDP recognizes that there may be a number of questions regarding this new guidance. We are developing a Webinar for mid-April during which OJJDP and OGC leadership will provide an overview of the guidance and answer questions from the states. To prepare for the Webinar, we are compiling a list of Frequently Asked Questions (FAQs) that will be posted on our Web site (ojjdp.gov/compliance). Please e-mail any questions you have to your OJJDP State Representative so we can plan to address them during the Webinar or include them in the FAQs. In addition, because we anticipate that disaggregating the data may present logistical and data collection challenges, we are setting up a team of technical assistance providers to assist states with that process. We will provide details on how to receive that assistance during the Webinar.

As I stated above, OJJDP maintains the position that, as a matter of policy, juveniles accused of or adjudicated for certain MIP offenses should never be securely detained in a juvenile detention center, juvenile correctional facility, or an adult jail or lockup. OJJDP is committed to pursuing a statutory amendment to include MIP offenses as status offenses, and states should be advised that data collection and reporting requirements for this classification of juveniles may again be required in the future. Until then, we believe separating the data is necessary.

Should you have any questions regarding this guidance, please contact OJJDP’s Compliance Monitoring Coordinator (elissa.rumsey@usdoj.gov), or your OJJDP State Representative, or me directly at jeff.slowikowski@usdoj.gov.

Attachment: October 20, 2010, Memorandum
### Juvenile Secure Detention Register

<table>
<thead>
<tr>
<th>Case Number</th>
<th>DOB</th>
<th>Sex</th>
<th>Race</th>
<th>Authorizing County</th>
<th>Admit Date</th>
<th>Admit Time</th>
<th>Release Date</th>
<th>Release Time</th>
<th>Statute</th>
<th>Reason for Detention</th>
<th>Notes</th>
</tr>
</thead>
</table>

Note: Blue columns must contain data.

Were juveniles held in secure custody this reporting period?

- Yes
- No
With a little creativity and trial and error (OK, sometimes more error than you want!) it is possible to generate a variety of reports and information from JSDR that you may find useful. Many facilities have developed their own data systems, either for Detention use and/or as part of a co-located system, and most data reports you generate may come from sources other than JSDR. This document provides some examples of data that you can generate just for detention and/or use it to “match” your other data system(s).

However, before illustrating some report capabilities you should remember a couple things:

1. The data coming out is only as reliable as the data going in – so, if you are careful entering data then the data that you get out will be that much better.
2. Data “across” facilities may or may not be comparable, depending on the data element(s) you are working with. For example:
   a. Things like age, sex, race, dates of admission/release, etc. that don’t really have much “interpretation” to them are very reliable
   b. Things like Basis for Detention (the old “Reason”) and the underlying Statute are more subject to interpretation and differences between facilities. As we continue to work toward more consistent data entry, those kinds of comparisons may become more valid.
   c. Data that requires a calculation can be the data that is most susceptible to errors. For example, Average LOS (Length of Stay) is subject to making sure that all individual entries are filled in. If you have a juvenile admitted in JSDR, for instance in 2006, that was never actually released in JSDR, that youth will show up with a very long LOS that would be included in the Avg LOS data (see Figure 1.2 for example in which it would seem to indicate that the average length of stay for kids held in Brown County during that sample period was over 40 days – and if you went to the Brown County list you would find a juvenile that is listed as having been admitted in May of 2000 and not released until May 2007).
   d. Different practices can lead to different data. For example, some counties use 72-hour holds much moreso than the sanctions process.
   e. Some counties serve regions so that significant portions of their admissions are not “in-county” youth. Variations in practice across counties in how they use Detention can then create problems comparing facility data.

With that in mind, let’s go!!!!
Section 2  Basic Types of Reports

If you go to the Home Page of JSDR you will see the Reports tab at the top (Figure 1.0):

That is the place to start. Simply select the Reports tab and you will get a screen that allows you to check whether you want a

Status Summary Report
or an
Offenses Report
A **Status Summary Report** generates aggregate data that includes a listing of all facilities in JSDR sorted by the “order” you indicate in the lower section of the report form. For example, Illustration 1.1 shows the “input” to generate a Status Summary Report for facilities sorted by facility (alphabetically—which is kind of the default format anyway), in this case for the first quarter of 2007. You can select additional parameters for your search (e.g. by authorizing county, reason codes, statutes, age, race, sex, etc.). There will be more information later on when you might want to use a Status Summary Report.

Figure 1.1 – Example input for Status Summary Report

![Figure 1.1](image)

If you select the Generate Report button, you then get a report that looks something like Figure 1.2:
Figure 1.2 – Sample Status Summary Report

Note a couple of things:

1. This screen shot does not include the whole list – but when you go to generate the report you can scroll down the whole list to see more facilities, and

2. As of now, this includes facilities that may hold juveniles but are not using JSDR to report placements given the very small number of juveniles held. For compliance purposes that data is collected in another way. So, for the most part, the facilities that you see holding juveniles are those authorized juvenile detention facilities (including co-located).

If you did the same report request but selected “Total Admitted” as the 1st Sort Key, you would get the same numbers but in a different order, as illustrated in Figure 1.4:
Here you can see that this “sort” basically shows those juvenile detention facilities that use JDSR to report data.

The Status Summary Report contains a number of columns that have data generated by the system (and don’t ask how some of these are calculated, because I don’t know!!) They are:

- **Admitted** – this includes the number of youth “placed” in the facility during that period, including juveniles with an admission date prior to the dates you search for. So, it technically is a list of any juvenile who spent any time in the facility during the period, not just those “admitted”. If you want to get a list of kids actually admitted during a time period, use an Offenses Report and then “count” how many came in during the dates you want.
- **Released** – This one is easier and makes sense. It is the number of juveniles with a release date in JSDR during the requested time frame.
- **Pending** – In theory this should represent the number of “carryover” kids at the end of your search period, but frankly I don’t know if it works that way, and it’s not a particularly functional statistic.
- **ADP** – **Average Daily Population** - Now, this is where it gets complicated in that I don’t know the formula the system uses to calculate the ADP, but it is not a “point in time” system that facilities would typically use. Specifically, most facilities report to DOC their average daily populations based on the number of juveniles housed at a point in time, usually early morning. That system does not take into account (rightfully so) the
number of juveniles that may come and go during a time period. JSDR on
the other hand uses some complicated formula to convert any placement
into data that gets added into and then averaged to get an ADP. So, don’t
worry that the JSDR ADP is different than how you might record it for your
own use. You can use the JSDR ADP to see if there are any evident
differences that might bear further investigation, but always be sure what
data base you are using and comparing it to. In comparing JSDR average
daily populations with those you report to DOC, they vary by from .5-1.0
ADP --- go figure.

- **Avg. LOS – Average Length of Stay** – This data element is also subject to
error (particularly if a juvenile is admitted and never released over a long
period of time) and the calculation “behind the scenes” involves some kind
of complicated conversion of dates and times to minutes. So, again this
data may be slightly different than your own reporting system, but you can
compare your length of stay with other facilities. It can be a reasonably
accurate picture of how long youth are held in detention facilities, and you
can compare time periods since the calculations are the same for any time
frame you choose (e.g. you want to compare the Avg. LOS for 2006 to
2007; or the first quarter of 2007 with the first quarter of 2008).

- **Avg. Age** – This data appears to be relatively accurate, although note that
JSDR calculates age at time of admission as a decimal that includes the
number of months “past” an age. For example, whereas you might record
someone as 15 in your own data system, that same juvenile could be 15
years and 6 months old and would be counted as 15.5 by JSDR
standards.

- **Hours of Stay Columns** – These are columns that were created for
compliance purposes by OJA but you can look at to see how long
juveniles are held if held less than 24 hours. It’s likely you would never
use this data.

There are other ways to calculate an average age and length of stay that will be
illustrated later through the use of Offense Reports, but for now that’s it!!
An **Offenses Report** will focus on a specific facility and can be used to generate data for that facility only. There are few general comments regarding Offenses Reports that you can generate:

1. The Offenses Report is most useful for generating data for your own facility. You are not restricted to viewing data only from your facility, but this is rarely a reason to look at others and you should avoid doing so unless you are curious about a particular issue (e.g. you have a lot more sanctions than another county and wonder why – might be that county uses more 72 hour holds).

2. The Offenses Report generates a list that includes names that should not be shared outside your direct use. If you wish to copy data from an Offenses Report to a spreadsheet, you can copy to Excel and then manipulate all the columns except for name. For purposes of this guide, all name fields will be deleted/blocked.

3. As with the Status Summary Report, you can select certain parameters to bring up, although with recent changes in JSDR some of the basic elements (age, race, sex) are now included in the report that can be copied to Excel and worked with through that system.

Figure 2.1 illustrates a pretty basic Offenses Summary Report request, namely listing the specific admissions for Dane County for the first quarter of 2007 and not including any other parameters:

![Figure 2.1 – Offense Summary Report request format](image)

Hitting the Generate Report button will get a report that looks like Figure 2.2:
The columns of data that show up include:

**Name**
- **Authorizing County** – for those counties that take out of county youth you will see that show up on the list.
- **Facility** – Simply the facility the youth are held in
- **Age @ TOA** – Age at time of Admission, recently added to this report
- **Race** – As coded by data entry, recently added to this report
- **Sex** – Recently added to this report
- **Statute** – Reflects the underlying statute entered as the basis for that particular hold
- **Reason Code** – Shows the reason for this particular episode/hold as entered in JSDR
- **Admit Date and Time**
- **Release Date and Time**
- **LOS** – Length of Stay is listed in hours up to 72 hours and then reverts to counting days
- **Reason Code Detail** – includes any information included in the Detail/Notes section of the JSDR screen used when entering that youth’s admission.
One more bit of data that is included in this report is a “count” and the search parameters you included. To get to those, however, you need to go down to the bottom of a page as illustrated in Figure 2.3:

Figure 2.3 – Offenses Report with the “count” and search parameters

For example, this shows:
1. There were a total of 97 records found (not all on this page)
2. This is page 1 of 2 pages of admissions
3. The date you searched for was 1/1/2007-3/31/2007
4. The facility searched was Portage County Detention

So, quickly you could say there were 97 juvenile admissions to the Portage Co. Juvenile Detention facility in the first quarter of 2007

So, that’s the basics on Status Summary Report and Offenses Reports. If you are ready to move on, the following sections give you some ideas on how you can use these to generate data that may be of interest/useful to you.
Section 3 The Status Summary Report

The best use for this Status Summary Report is to quickly generate some aggregate data within parameters of interest. For instance:

1. If I wanted to find out how many black, male juveniles were admitted for sanctions throughout the state, sorted by number of admissions I could fill in the parameters as indicated in Figure 3.1

Figure 3.1 – Generating a Report Sample

The report that results from selecting the Generate Report button is illustrated in Figure 3.2:
So, for example you see that for the first quarter of 2007, there were 15 black males placed in Detention in Dane County for Sanctions, 38 in Rock, and so on. You will also see that during that period the average daily number of black males in Dane County for sanctions was .83 and their average length of stay was 6.56 days. Note that the “52 records found” refers to the number of facilities on the list, not the number of juveniles held that meet this parameter.

You could then go back to the Report screen to modify your selection to select, for instance, white males, females, black females, white females, etc.. Or, you could change the Reason for Admission to 72-hour holds instead of sanctions (remember that all counties have developed unique practices that may explain what appear to be differences in actual user of admission.) For example, if you searched for 72-hour consequential holds you would find that Rock County did essentially no such holds during this time periods yet had a higher number of sanctions whereas Racine County used 72-hour holds and almost no sanctions during this same period.
Another example would be using the Status Summary Report to determine how many juveniles were placed by Jefferson County in what facilities during the first quarter of 2007. The search criteria would look something like Figure 3.3:

Figure 3.3 – Search for Jefferson County Secure Custody placements 1st qtr.

You could narrow the search by reason, sex, age, etc. but for now let’s just say I want to know how many kids Jefferson County authorized holding in secure custody (and where) during the first quarter of 2007. The results indicate:
So, from this you can see that Jefferson County authorized holding 23 youth in Washington County, 4 in Rock County and 1 in Fond du Lac County for the first quarter of 2007. If you wanted more information about the youth placed in Rock County, for instance, you could click on the Rock County Secure Juvenile Detention Center link and you would get a screen that looks like this:

Figure 3.5 – Detail of Jefferson County placements in Rock County
Using data from the Status Summary Report, you can also generate information like that shared with Superintendents and others as a way to highlight trends across the state. Taking the data from a Status Summary Report and converting it to Excel form allows you to create graphs like the one below (showing changes in admissions entered in JSDR from 2006 to 2007):

This type of data may be of interest if you are wondering if the trend in your facility is similar to others. In this example, you can see the most detention facilities had fewer admissions in 2007 compared to 2006 and only 5 had more admissions.
Section 4  Offenses Report

Any of the Status Summary Reports can be copied into an Excel spreadsheet if you want to use it to generate charts/graphs or manipulate the data in some way that JSDR does not allow directly. Refer to later information in the section on using Excel.

More often than not, however, you are interested in generating data for your own facility vs. comparing it with others. To do that, the best way is to go directly to using the Offenses Report choice. If you are comfortable with the data you have entered into JSDR, you can use quite a bit of it for a variety of reasons. Some examples will be provided in this guide, but you can go in and practice to see what you can generate.

So, let’s say you are in Portage County and you want to generate a list of kids placed in your facility in the first quarter of 2007. How would you do that?

1. Go to the Report form and select:
   a. Offenses Report
   b. Enter the date range you want (1/1/2008 to 3/31/2008)
   c. Make sure Facility says Portage County
   d. Then, assuming you want all kids, select:
      i. All counties
      ii. All Reason Codes
      iii. Either Sex
      iv. All Races
      v. Leave other fields blank or left to their default setting
   e. Decide how you want to sort the list (e.g. in this case by admission date)

So, you will have a report request form that looks like Figure 4.1
Then, a trick if you are looking for a list that is not broken into pages, uncheck the box that reads “Check to format paging & create report…..”. If you leave it checked you will get a report that is broken into pages (which makes it more difficult to move to Excel or print). In Figure 4.1 the box has been unchecked, so it results in a report that looks like Figure 4.2:

Figure 4.2 – Offenses Report sample screen
If you scrolled down all the way on this page you would see that there are no page breaks and you eventually get to the end with a list of 97 juveniles placed in Portage County during the first quarter of 2007. Information about the age, race, sex, reason for admission, etc. is all there and you could print that list if you want.

If you wanted to generate just a list of males admitted during that same period you would simply alter the initial report request to show only Males; or you could restrict it by age or race or by authorizing county, etc...

Now, suppose you are in Washington County and want to generate a list of juveniles placed in your facility authorized by Ozaukee County.

1. Select Offenses Report
2. Enter Date Range
3. Select Washington County for Facility
4. Select Ozaukee County for Authorizing county
5. Leave other fields set to default or blank unless you want something specific
6. In this example no sort key will be listed – the default is alphabetical

So, it looks like:

Figure 4.3 – Search of Ozaukee Placements in Washington Co. 1st qtr. 2007

and will generate a list that looks like this:
Again, you could scroll through the whole list (in this case it’s 51 records total) if you want to confirm or verify some information about the juveniles placed in Washington Co... And, if you were interested in particular items such as age, race, sex, reason for placement, etc. you could go back to the search form and set those fields accordingly.

Let’s say you are in Racine County and for your DMC Oversight Committee want to generate some data about how many black males were authorized by Racine County to be held for Sanctions in the first quarter of 2008.

1. Select Offenses Report
2. Set the date parameters (1/1/2008 – 3/31/2008)
3. Select Racine County as the Facility
4. Select Racine County as the Authorizing County
5. Select Sanctions for Reason Code
6. Select Males for Sex
7. Select Black for Race
8. In this example, leave age and sort keys blank/default

So, the search request looks like Figure 4.5:
Figure 4.5 – Search of Black Males Held by Racine in Racine for 1st qtr of 2008

and it will generate a report that looks like:

Figure 4.6 – Report for Search of Black Male Sanctions in Racine

In this case, Racine Co. held 15 black males for Sanctions in the first quarter of 2008.

So, there are many ways to generate lists/reports that may be useful to you as you work with information about who is in your Detention facility.
Using JSDR to generate some reports or data has limitations in that you unfortunately cannot call up a list and then sort/re-sort that same list to generate different sets of data. You cannot use the list in JSDR to generate tables or graphs of any kind.

But, Excel to the rescue once you get used to transferring JSDR data to Excel!! This guide will include how to move JSDR data to Excel and provide a couple of examples. It is not an Excel guide, so if you are unfamiliar with Excel you may want to work with someone who knows that program to get you going.

OK, so you want to transfer data from JSDR to Excel? Well, it can be done for a Status Summary Report or an Offenses Report. As referenced earlier, you are likely going to want to use an Offenses Report to focus on your own facility rather than use the status report to compare across facilities, so examples will focus on using the Offenses Report.

How do I get started?

To get started, just pick a report that you might want to generate in the normal course of data collection. For example, let's say you want to gather data about all the kids placed in January 2008 in Waukesha County and you don't want to keep going back to the JSDR search form for each data element. So:

1. Generate the report just as you would in the examples above, using an Offenses Report but you can leave pretty much all the fields set to default except:
   a. Select Offenses Report
   b. Set the data parameters
   c. Select Waukesha County
   d. Generate the Report

   The report will end up looking like Figure 5.1
If you scrolled to the bottom of this list you would see that there are 29 records, of which you see about 10-11 on this particular “screen shot”.

This list is alphabetical but it has information on it about age, race, sex, reason for admission, dates/times, authorizing county, etc. and you want to sort it without going back to each field in the search form one-by-one. So, you need to move it to Excel. Here comes the tricky part:

1. Make sure you have an open/blank Excel spreadsheet to work with
2. Use your cursor to go to the top, left-hand cell on your JSDR list (in this case that would be the Name field.
3. Hold down the shift key and move your cursor to the lowest right-hand cell (in order to show how this would work, you’ll see Figure 5.2 shows the “bottom” of this same listing. The lower, right-hand cell is blank. Click on that and all the cells between the top left and bottom right will be highlighted and you can now copy them by:
   a. Going to the Edit – Copy Menu and copying the data you’ve highlighted
   b. Going to your open Excel spreadsheet and selecting a cell to start with
   c. Using the Edit – Paste menu and you’ll get something like Figure 5.3
Figure 5.2 – Bottom Half of Waukesha search

Figure 5.3 – Excel Spreadsheet w. Waukesha January Admissions
This is starting to look like an Excel spreadsheet that you can now work with by adjusting margins, deleting unnecessary columns, etc. For instance, since we know it’s Waukesha County we can delete that column; since we’re not going to use this for individual case data, we can delete the name column; there are no entries in the “Reason Code Detail” column so we can delete that one; we can re-format to landscape; we can manipulate the headings to fit better; we can modify the size of rows and columns and eventually get something like Figure 5.4

![Excel Spreadsheet for Waukesha Data](image)

You now have a spreadsheet you can work with to sort by any of the columns you wish. For example, taking this same sheet and sorting by Admit Date will end up like Figure 5.5
Figure 5.5 – Waukesha Data Sorted by Admit Date

Or, sorted by Race/Sex would look like Figure 5.6

Figure 5.6 – Waukesha data sorted by Race and Sex
The only column you cannot sort by and make it work is the Length of Stay column. Given the way the formula report out length of stay, it does not seem able to differentiate between 18 days and 18 hours, so it just takes the “18”. However, if you want length of stay, you can delete the data in that column and create your own formula by subtracting the Admit date/time from the Release date and time and making sure the settings for your newly created cell generate a number instead of a date.

In Figure 5.7 you’ll see a spreadsheet sample for Dane County, sorted by Length of Stay (new formula – not using the JSDR formula), then by Reason, then by Race:

![Figure 5.7 – Dane County Sample Report in Excel](image)

So, I could sort and count any of these columns as needed in order to generate some data. For example, just on this screen shot you will see that the LOS ranged from .7 to 9.6 days. If I were interested in how long sanctions youth were held I could sort by Sanctions – LOS – Race, for example.

There are a couple of tricks when using this system to generate data, including:

1. Note that when you are working in JSDR and the name cell contains a juvenile’s name in “blue” and underlined, e.g. Duck, Daffy and that when you
click on that cell you are re-directed to that Offender record. So, when you are selecting, copying, pasting cells to copy to Excel, it’s recommended you use the arrows and Shift key to capture the cells you want. Also, that re-direct function goes along with the cell to the Excel spreadsheet so that if you click on that cell with your mouse in Excel, you will be re-directed to JSDR (which can be real annoying!).

2. The bigger the search the more complicated it gets for JSDR to generate the data and for you to move it to Excel. So, you may want to keep your searches for Offense Records and transferring to Excel to a quarter or month (vs. doing a full year, for instance). You can do a full year if you want, but it just takes practice to get it into a workable form.
Section 6  

Using JSDR to check for Data Reliability

You can also use JSDR as sort of a “check” on whether or not the data that is in the system is accurate/reliable or whether there are just some items missed in the data entry.

The good news is that for much of the data entry the key fields require information to be put in. For example, you can’t save an offender record without putting in a date of birth (although you can put in the wrong year, e.g. the year you are entering the data or entering 1985 instead of 1995, and so on). Given the number of admissions recorded in facilities, there seem to be very few errors, but a couple more common ones are:

1. Simply not releasing a juvenile – just overlooking it. This can cause a juvenile to be on your “count” and show up in data in unintended places. For example, if you forgot to release a juvenile in 2006, that juvenile will still be counted if you look up length of stay data in 2007 and 2008 – only now you have a juvenile that is counting maybe 400-700 days in terms of LOS. Ooops!
2. Starting and stopping, and inadvertently saving incomplete Offender Records. This can happen sometimes if a person doing data entry enters the last name where the first name should go and then realizes the error and inadvertently the record is saved.

And, you may want to use JSDR to “match” with your own internal data system to see if any records were missed (e.g. generate a list of admissions for January from JSDR and your own system and see if they match or if records were missed).

In any case, you can use the Offenses Record search function to generate a list of cases in which the more common errors can be “caught”. For example, take this search by release date for Fond du Lac County placements in January 2008, Figure 6.1:
As you can see for this “fake” record (which I will change after completing this example), Ebeneezer Duck was admitted in January of 2006 and never released, thus his 968 days of stay is “counted” if you were to look at the average length of stay for kids held in Fond du Lac in January 2008. Obviously this would skew the results of that data!!!

Now, going back in to change Mr. Duck’s DOB to much earlier and then doing a report by Date of Admission (for Fond du Lac, January 2008), what shows up is in Figure 6.2
And, you can see that Mr. Duck’s Age at Time of Admission (TOA) is 25. Now, that’s not right!!

So, whether you are the Superintendent or the data entry staff for a facility, you can use JSDR at your convenience to call up some quick reports and scan them for obvious errors.
Section 7

Using JSDR for Compliance Monitoring – You To Can Be a Compliance Monitor!!

Although OJA has created some internal queries that pull information from JSDR into formats that help report to the federal government, you can do quite a bit of internal compliance monitoring as well.

This can be done in a couple different ways as shown below:

**Sorting lists by certain fields to catch errors**

First, you can sort a set of entries by statute, knowing that the ones that create the most confusion and compliance concerns are either Chapter 48 or Chapter 938 statutes.

So, for example, if you took a look at (not to pick on) Racine County for January 2008 and sort by statute you would get a list that looks like Figure 7.1:

![Figure 7.1](image)

You can see from this portion of the list (and there are some more on the next page) in which either (1) the statute entry is missing (which is a problem), (2) the
statute listed is a CHIPS statute, or (3) the statute listed is a JIPS statute (in this case for truancy). Each of these poses compliance related questions and require follow-up by OJA.

In this case, the JIPS kids are shown as meeting the Violation of Court Order “reason”, and OJA would check to make sure that the records support that designation. But, take the record for which there is no statute entered – that simply is a matter of going back to the file and finding the appropriate statute and updating the record to eliminate that “blank”.

As you learn more about the VCO Reason Code and how CHIPS or JIPS kids may or may not be violations of the federal compliance rules, the more you can look at a list like this and see if there are some things that just “aren’t right”.

The more you can review these reports and catch potential compliance problems as you go along vs. waiting for OJA on-site inspections, the better.

**Using the Statute Compliance selection(s) to Check:**

JSDR has added a field in the report function that allows you to select from a number of searches to see if there may be records with compliance concerns. To some extent this is an easier way to check for potential compliance problems. Simply conduct a search using the Statute Compliance field. See Figure 7.2:

Figure 7.2 – Using Statute Compliance Field to Monitor Internal Compliance

![Figure 7.2](image)

The most complete choice is simply the last one – Statute Not Approved, Not Valid, or a Status Offense. Using that choice, you will generate a list shown in Figure 7.3:
Note that these do not necessarily represent federal violations – only that they are possible violations depending on the underlying process used to hold them. In this case, this screen shot shows a list of JIPS/Truant youth who were held in Racine County in January 2008 for Sanctions, using the VCO process. You could check these periodically, and these are the kinds of cases OJA focuses on most in the compliance visit.

So, whether you generate your own list sorted by statute or other fields or use the built-in Statute Compliance choices, you can get help monitor what youth may or may not be violations of the JJDPA requirements.
1. **Can I print a list of kids placed during a time period?**
   - Yes – Use the Offenses Report
     - Enter the time frame you want, make sure you note your facility, add any parameters you want (e.g. specific reason codes, age, race, sex, etc.)
     - If you want a “running list” vs. one broken up by pages, uncheck the format box near the bottom and click on Generate Report
     - Use

2. **Can I find out how my admissions for sanctions (or 72-hour holds, or VCOs, or Capias for Delinquency, etc.) compare with other facilities?**
   - Yes – Use the Status Summary Report
     - Enter the date range you want to compare, leave “all facilities”, select Sanctions in the Reason Code field
     - If you want them alphabetically, leave the sort keys blank; if you want the detention centers together, select Total Admitted and it will group the detention facilities near the bottom of the page
     - Use the commands on your web browser to do a File-Print

3. **My Sheriff is asking about revenue and other counties. Can I find out/print a list of how many kids were placed in my facility by another county last year?**
   - Yes – for a detailed list you can print out, use the Offenses Report
     - Enter the time frame you want (e.g. 1/1/2007-12/31/2007), your facility, select the authorizing facility
     - Enter any other parameters you want
     - Sort by date of admission if you want – default will be alphabetically
     - Generate Report
     - Use browser File – Print if you want to print out a list

4. **Can I get an average age for kids placed in my facility last year?**
   - Yes – use the Status Summary Report
     - Enter the date range you want (e.g. 1/1/2007-12/31/2007)
     - If you want just your facility, select your facility – but you don’t need to
     - You can select a sort key if you want (e.g. sort by Average Age, sort by total admitted)- or just leave that blank and you’ll get a list of all facilities and you can see yours
     - Remember that the average age calculation by JSDR is based on age at time of admission, including months as well as years – so a juvenile who is 15 years and 8 months old will be calculated as 15.7 or so (compared to 15 that you might record).
5 Can I take data from JSDR and sort it?
Yes – Most often you’d want to use the Offenses Report to generate a list of kids from your facility.
- Remember to “uncheck” the format box near the bottom and the you need to copy/paste data from JSDR into Excel
- Reformat it to work for you by deleting unnecessary rows, re-sizing, etc.
- Once in Excel format you can manipulate the data as you wish.

6 Is the Average Length of Stay in JSDR reliable?
Sort of – the LOS is some kind of computer calculation that breaks time into minutes and then divides by the number of minutes in a time frame, so it will not match the more simple calculation you might do from another data source.
However, one way to deal with that is copy/paste an Offenses Report into Excel, delete the LOS data from the column and enter your own formula (yes, you can subtract days in Excel). You can control the number of decimal places generated by this formula, but it will inevitably different from how most facilities count “days”.
For example, if a youth is in a facility from 8 a.m. one day to 8 p.m. the next, some facilities will count/bill that as two days. Some would count it as one day. In this case, the excel formula would count it as 1.5 days since it’s 36 hours.
So, if you want to use JSDR as a data source for LOS that’s fine – just know it may not match with other systems you might have to count days.

7 I generated a report and things did not show up like I thought they would OR the numbers aren’t close to what I thought they would be. What’s wrong?
Unfortunately, as with most computer things, the problem is not the computer – it just does what you ask it to.
So, go back to your search form and see if you for sure entered the parameters the way you want them (e.g. did you inadvertently enter 1/1/2009 instead of 1/1/2007? Did you leave a field filled in for Sanctions when you meant to look for all reason codes?
Most of the time going back to the Search Form and double-checking the fields will answer your problem.
If, for some reason, there is data that you know is in JSDR but does not show up in a correct search, contact OJA – there could be a programming error that is creating a problem.

Have fun!!!!
For more assistance, contact the OJA Compliance Monitor
<table>
<thead>
<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
</tr>
</thead>
</table>
| **Accused status offender (JIPS)**  
Examples: **ALLEGED TO BE** Uncontrollable, habitually truant from home or school, dropout, **NOTE:** Underage drinking violations are considered status offenses. | Secure holding in jail or lockup prohibited  
(a) Secure holding in lockup prohibited  
(b) Approved Jail; allowed to hold only an accused status offender who has runaway while under a Non-Secure Custody Order authorized by an intake worker, judge or court commissioner and no other suitable alternative exists. | (a) 938.209 (3) which restricts lockups to alleged delinquent only (See Wis. Admin. Code §DOC 349.21 (1))  
(b) 48.208 (4) & 48.209 (1) | Secure hold limited to 24 hours prior to and 24 hours after initial court appearance (excluding weekends and holidays) | Secure hold limited to specific offenders with a requirement of a court hearing within 24 hours of the end of the day (midnight) on which the secure hold is initiated. | (a) Fugitive from another state – 938.208 (2)  
(b) runaway from a juvenile correctional facility – 938.208 (2)  
(c) runaway from a secured residential care center – 938.208 (2)  
runaway from nonsecure custody after placement there by an intake worker or court if no other suitable alternative exists.  
938.208 (4) |
| **Juvenile non-offender (CHIPS)**  
Examples: **Without a parent or guardian, abandoned, who has been the victim of abuse or neglect, receiving inadequate care while parent is incarcerated, whose parent neglects or refuses to provide adequate care, shelter etc.** | Secure holding in a jail or lockup prohibited  
(a) Secure holding in lockup prohibited  
(b) secure holding in a jail is available under a court ordered protective order  
(c) secure holding in a jail is allowed if PC exists to believe the child ran away while under a Non-Secure Custody Order authorized by intake worker, judge or court commissioner and no other suitable alternative exists. (and the jail is approved by DOC to hold juveniles) | (a) 938.209 (3) which restricts lockups to alleged delinquents only (See Wis. Admin. Code §DOC 349.21 (1))  
(b) 938.208 (3) & 48.208 (3)  
(c) 48.208 (4) and 48.209 | Secure holding prohibited  
Please note that a CHIPS child who has run away, truant, or is uncontrollable is considered an ACCUSED STATUS offender for federal purposes and may be held as appropriate for accused status offenders above. | Secure holding prohibited except under a protective court order  
Or a child who has runaway from a placement in a nonsecure setting by an intake worker, judge or court commissioner and no other suitable alternative exists. | 938.208 (3) & 48.208 (3)  
48.208 (4) |
<table>
<thead>
<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil-type juvenile offender</td>
<td>Secure holding in a jail or lockup is prohibited</td>
<td>(a) Secure holding in lockup prohibited</td>
<td>(a)</td>
<td>938.209 (3) which restricts lockups to alleged delinquent only (See Wis. Admin. Code §DOC 349.21 (1))</td>
<td>(b)</td>
<td>938.17 (1)</td>
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<td>Examples: Traffic citations, municipal ordinance violations,</td>
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<tr>
<td>Alien juvenile</td>
<td>Secure holding in a jail or lockup is prohibited</td>
<td>(a) Secure holding in lockup prohibited</td>
<td>(a)</td>
<td>938.209 (3) which restricts lockups to alleged delinquent only (See Wis. Admin. Code §DOC 349.21 (1))</td>
<td>For federal purposes, alien children are treated as status offenders and may be held as appropriate for STATUS OFFENDERS above</td>
<td></td>
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<td>Example: Juvenile who is an unauthorized alien national being held under federal law awaiting return to their country of citizenship</td>
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</tbody>
</table>
### ADULT JAILS AND LOCKUPS

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<thead>
<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDP</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudicated status offender (JIPS)</td>
<td>Secure holding in a jail or lockup is prohibited.</td>
<td>(a)Secure holding in lockup prohibited</td>
<td>(a)938.209 (3) which restricts lockups to alleged delinquent only. (See Wis. Admin. Code §DOC 349.21 (1))</td>
<td>Secure holding prohibited</td>
<td>Secure holding allowed if probable cause exists that the juvenile runaway from nonsecure custody after placement there by an intake worker or court if no other suitable alternative exists.</td>
<td>938.208 (4)</td>
</tr>
<tr>
<td>Examples: FOUND TO BE... Uncontrollable, habitually truant from home or school, dropout</td>
<td>(b) Jail; Secure holding allowed if probable cause exists that the juvenile has runaway while under a Non-Secure Custody Order after placement there by an intake worker or court if no other suitable alternative exists with requirement that court review juvenile status every 3 days.</td>
<td>(b) 938.208 (4)</td>
<td></td>
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</tr>
<tr>
<td>Status offender accused of violating a valid court order</td>
<td>Secure holding in a jail or lockup is prohibited</td>
<td>(a)Secure holding in lockup prohibited</td>
<td>(a)938.209 (3) which restricts lockups to alleged delinquent only. (See Wis. Admin. Code §DOC 349.21 (1))</td>
<td>Secure holding allowed if:  a. interviewed by appropriate public entity within 24 hrs of being placed in secure, and b. court receives the assessment and c. reasonable cause hearing held within 48 hours of placement (with all due process rights) excludes weekends and holidays.</td>
<td>Secure holding allowed if probable cause exists that the juvenile ran away from nonsecure custody after placement there by an intake worker or court if no other suitable alternative exists.</td>
<td>938.208 (4)</td>
</tr>
<tr>
<td>Examples: FOUND TO BE... Uncontrollable, habitually truant from home or school, dropout who is now accused of violating the dispositional order.</td>
<td>(b) Secure hold in an approved jail is allowed if PC exists that the juvenile has runaway while under a Non-Secure Custody Order authorized by an intake worker, judge or court commissioner and no other suitable alternative exists, with requirement that court review juvenile status every 3 days.</td>
<td>(b) 938.208 (4) &amp; 938.209 (1)</td>
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</table>
### ADULT JAILS AND LOCKUPS

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<thead>
<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDP A</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDP A</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
</tr>
</thead>
</table>
| Status offender adjudicated for violating a valid court order | Secure holding in a jail or lockup prohibited | (a) Secure holding in lockup prohibited | No restrictions on secure placement | Secure holding allowed if probable cause exists that the juvenile ran away from nonsecure custody after placement there by an intake worker or court if no other suitable alternative exists | 938.208 (4) (feds say court order, TPC signed only by social worker is not a valid court order)  
BUT SEE 938.355 (6) (a) 2 which states: If a juvenile who has been found to be in need of protection or services under s. 938.13 (4), uncontrollable (6m), school dropout (7), habitually truant from home (12), delinquent act before age 10 or (14) not responsible or not competent violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions under par. (d), other than placement in a juvenile detention facility or juvenile portion of a county jail | 938.208 (4) |

**Examples: FOUND TO BE...**

- Uncontrollable, habitually truant from home or school, dropout who is now FOUND TO BE IN violation of the dispositional order

- Secure sanction not available for JIPS kids if JIPS is based on:
  - uncontrollable
  - school dropout
  - habitually truant from home
  - delinquent act before age 10
  - not competent or not responsible.

Secure sanction is available for JIPS kids if JIPS is based on habitually truant from school.

A circuit court can order secure detention for up to 10 days for each incident of violation of a dispo order on a citation for ordinance violations of truancy or dropout if statutory procedures are followed.

- Secure sanction in a juvenile portion of a county jail is also available for for violating a dispo. order on muni. citation for truancy/dropout and certain procedures are followed.

938.17 (2)(i) sanction for violating disp on muni citation for
### ADULT JAILS AND LOCKUPS

| Accused of delinquent act | 6.3.08 truancy/dropout 938.345(2) & 938.342(1d) reference dispositions for truants & dropouts. | 6 hour limit for ID, processing, release to parents, transfer to juvenile facility or 6 hours prior to and 6 hours after a court appearance | No restrictions on secure placement | 1. Probable cause exists to believe that a juvenile has committed a delinquent act and 1. 938.208 (1)  
   a. presents a substantial risk of physical harm to another or  
   b. presents a substantial risk of running away |

**Examples:** arrested for or petition filed alleging an act which would be a crime if committed by an adult (disorderly conduct, battery, burglary, et.)

- **(a)** Secure hold in a lockup 6 hour limit while awaiting a hearing
- **(b)** Secure hold in an approved jail is allowed with requirement that court review juvenile status every 3 days.
### ADULT JAILS AND LOCKUPS

<table>
<thead>
<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDPAN</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDPAN</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
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<tbody>
<tr>
<td>Adjudicated juvenile delinquent.</td>
<td>(a) 6 hour limit for ID, processing, release to parents, transfer to juvenile facility or (b) 6 hours prior to and 6 hours after a court appearance</td>
<td>(a) 6 hour limit while awaiting a hearing</td>
<td>(a) 938.209 (2m) (a)</td>
<td>No restrictions on secure placement</td>
<td>(d) 938.355 (6d) 2</td>
<td>(can do both but no more than 72 hours total without a court hearing (6d) 3)</td>
</tr>
<tr>
<td>Examples: Found to be delinquent for an act that would be a crime if committed by an adult (disorderly conduct, battery, burglary, etc.)</td>
<td>(b) Secure hold in an approved jail is allowed with requirement that court review juvenile status every 3 days.</td>
<td>(b) 939.209 (1)</td>
<td>938.34 (3) (f)</td>
<td>938.34 (4h) for the serious offender program requirements</td>
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</table>

### DETENTION CENTERS

- Restrictions exist for both initial dispositional order and for sanctions.
  - **Initial**: (1) placement for up to 30 days in secure under the conditions of 938.34(3)(f) and for sanctions.
  - (2) Correctional placement under the provisions of 938.34 (4m) if offense is punishable by more than 6 months incarceration AND the juvenile is found to be a danger to the public.

- **Sanction**: For each incident in which the juvenile has violated the dispositional order, placement in a secure detention facility or juvenile portion of a county jail for not more than 10 days.
  - (d) 938.355 (6d) 2 (can do both but no more than 72 hours total without a court hearing (6d) 3)
<table>
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<tr>
<th>TYPE OF JUVENILE</th>
<th>JJDPA</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
<th>JJDPA</th>
<th>WISCONSIN</th>
<th>REFERENCE</th>
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<tbody>
<tr>
<td>Juvenile</td>
<td>Secure hold is limited to 6 hours prior to and 6 hours after a court appearance.</td>
<td>(a) No restrictions on Juvenile waived into adult court.</td>
<td>No restrictions on secure placement</td>
<td>A direct file juvenile, if under the age of 15 must be held in only in juvenile detention or in juvenile portion of a county jail.</td>
<td>938.183 (1m) (a)</td>
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<td>(b) No restrictions on juvenile age ≥15 subject to direct adult court jurisdict. Except:</td>
<td></td>
<td>If 16 or over and charged with a traffic crime, pretrial hold may only be in juvenile detention.</td>
<td>938.17 (1)</td>
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<td>(c) If 16 or over and charged with a traffic crime, pretrial hold may only be in juvenile detention.</td>
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<td>If waived by court proceeding and was held in secure detention shall be transferred to an appropriate officer or adult facility and is eligible for bail</td>
<td>938.18 (8)</td>
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<td>(d) If under the age of 15 must be held in only in juvenile detention or in juvenile portion of a county jail.</td>
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<tr>
<td>Juvenile</td>
<td>Secure holding is prohibited.</td>
<td>(a) No restrictions on Juvenile waived into adult court.</td>
<td>May be held securely until the state’s age of majority; must be sight and sound separated from juvenile delinquents within 6 months of reaching state’s age of majority 917.5 YRS in WI)</td>
<td>If 16 or over and convicted of a traffic crime and ordered to serve less than 6 months – must serve in juvenile detention facility</td>
<td>938.17 (1)</td>
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<td>transferred to</td>
<td>(b)</td>
<td>No restrictions on Juvenile waived into adult court.</td>
<td></td>
<td>If ordered to serve more than 6 months for a traffic crime, then adult court must send to juvenile court for disposition that may include juvenile correctional facility.</td>
<td>938.17 (1) (b)</td>
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<td>adult criminal</td>
<td>(c)</td>
<td>No restrictions on</td>
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<td>court and</td>
<td>(d)</td>
<td>Juvenile waived into adult court.</td>
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<td>convicted of a</td>
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<td>misdemeanor.</td>
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<tr>
<td>Juvenile</td>
<td>No restrictions on holding.</td>
<td>(a) No restrictions on Juvenile waived into adult court.</td>
<td>May be held securely until the state’s age of majority (17 in WI); must be sight and sound</td>
<td>Charged: If under the age of 15 must be held in only in juvenile detention or in juvenile</td>
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<td>transferred to</td>
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<td>(b) No restrictions on</td>
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<td>adult criminal</td>
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<td>Juvenile waived into adult court.</td>
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<td>JJ DPA</td>
<td>WISCONSIN</td>
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<td>ADULT JAILS AND LOCKUPS</td>
<td>DETENTION CENTERS</td>
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<td>convicted of a felony.</td>
<td>separated from juvenile delinquents within 6 months of reaching state’s age of majority (17.5 yrs in WI)</td>
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<tr>
<td>juvenile age ≥15 subject to direct adult court jurisd. Except: If 16 or over and convicted of a traffic crime and ordered to serve less than 6 months – must serve in juvenile detention facility If ordered to serve more than 6 months for a traffic crime, then adult court must send to juvenile court for disposition that may include juvenile correctional facility.</td>
<td>portion of a county jail.</td>
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</table>

**Convicted:**
When a juvenile who is subject to a criminal penalty under sub. (1m) or s. 938.183 (2), 2003 stats., attains the age of 17 years, the department may place the juvenile in a state prison named in s. 302.01, except that the department may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). (supermax)
MEMORANDUM

TO: State Agency Directors
   Juvenile Justice Specialists
   Compliance Monitors
   State Advisory Group Chairs

FROM: Jeff Slowikowski
      Acting Administrator, OJJDP

DATE: October 20, 2010

SUBJECT: Status Offenders and Non-offenders and the Juvenile Justice and Delinquency Prevention Act

Since the enactment of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has always understood the intent of this landmark legislation was to ensure that status offenders and non-offenders are never securely detained in a juvenile detention facility, juvenile correctional facility, or an adult jail or lockup.

Recent reviews conducted by the Office of Justice Program’s Office of General Counsel (OGC) of Section 223(a)(11) of the JJDP Act, as amended, have raised questions as to how the deinstitutionalization of status offenders core requirement should be interpreted, and what data should be reported to OJJDP. Therefore, OJJDP is proposing language that would amend the current statute to ensure that status offenders and non-offenders are treated appropriately. OJJDP proposes the following:

- Provide clarifying language that would require states that detain juveniles who have been accused or adjudicated for alcohol violations, which would not be violations of the law if committed by an adult over the age of 21, to be considered and treated as status offenders, and adhere to the requirements of Section 223(a)(11) of the JJDP Act of 1974, as amended.
> Provide clarifying language that would ensure that the valid court order (VCO) exception would not apply to non-offenders, as per Section 223(a)(11) of the JJDP Act of 1974, as amended.

As OGC continues to review the core requirement language in the statute, further language for clarification and legislative changes may be identified. At this point, our guidance is that no immediate changes for monitoring purposes are required. We will advise you when and if that changes.

OJJDP remains committed to ensuring that all juveniles, status offenders, non-offenders, and accused and adjudicated delinquent youth, are treated in a safe, fair and equitable manner in accordance with the intent of the JJDP Act.
**COMPLIANCE MONITORING QUESTIONNAIRE**

**INSTRUCTIONS:** This form is to be completed by an Office of Detention Facilities Specialist at DOC authorized facilities which are not approved to hold juveniles.

<table>
<thead>
<tr>
<th>NAME OF FACILITY</th>
<th>REPORTING STAFF NAME &amp; TITLE</th>
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<tr>
<th>OFFICE OF DETENTION FACILITIES (ODF) SPECIALIST NAME</th>
<th>DATE OF INSPECTION</th>
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</table>

1. Is the facility authorized to hold juveniles under DOC 346 or DOC 349?
   - [ ] Yes  [ ] No

2. Did the facility report holding persons under the age of 17 since the last inspection?
   - [ ] Yes  [ ] No

**COMMENTS:**

**DISTRIBUTION:** Original – Office of Justice Assistance; Copy – Office of Detention Facilities
MEMORANDUM OF UNDERSTANDING
BETWEEN
WISCONSIN DEPARTMENT OF CORRECTIONS
AND
WISCONSIN OFFICE OF JUSTICE ASSISTANCE

This memorandum of understanding (MOU) is between the Wisconsin Office of Justice Assistance (OJA) and the Wisconsin Department of Corrections (DOC), concerning the responsibility of the OJA to monitor and ensure compliance with the federal Juvenile Justice Delinquency Prevention Act.

UNDER THE TERMS OF THIS MOU THE DOC AND OJA AGREE AS FOLLOWS:

The DOC Office of Detention Facilities (ODF) will:

1. Complete the Compliance Monitoring Questionnaire (Form DOC _______) during the annual inspection of facilities that the DOC has authorized to operate.

2. Submit to OJA the completed Compliance Monitoring Questionnaire under paragraph 1 for facilities that are not approved to hold juveniles.

3. Assist facilities that are authorized by the DOC to hold juveniles to maintain physical, visual, and sound separation between juveniles and adults, consistent with the requirements of ch. DOC 346, Wis. Adm. Code.

4. Notify OJA of the construction or substantial remodeling of facilities that the DOC has authorized to operate or that are seeking from the DOC authorization to operate when such construction or substantial remodeling could impact compliance with the JJDPA.

5. Notify OJA when local places of detention seek authorization from the DOC to hold juveniles.

The OJA will:

6. Provide training, consultation, and guidance to ODF staff and facilities that the DOC has authorized to operate or that are seeking from the DOC authorization to operate as requested or needed.

7. Maintain and manage the reporting system(s) necessary to monitor compliance with core requirements and provide data to ODF as requested or needed.

8. Provide to the respective ODF specialist a copy of any follow-up report or letter from OJA to a local place of detention, relating to compliance with the JJDPA.

9. Follow-up and investigate as needed any potential violations identified by the ODF specialist during a site visit and notify ODF staff of the results of the follow-up.
10. Inform ODF of changes to JJDPAs rules and interpretations that impact operations of facilities that the DOC has authorized to operate.

The ODF and the OJA will:

11. Meet at least annually to review and resolve any issues or concerns of mutual interest.

DURATION OF MOU:

The DOC and OJA agree that this MOU is a continuing agreement that may be terminated by either party upon giving ninety (90) days written notice of the intent to terminate.

CONTACT PERSONS:

Department of Corrections:
Marty Ordinans, Director
3099 E. Washington Avenue
P.O. Box 7925
Madison, WI 53707-7925
Email: marty.ordinans@wisconsin.gov
Phone: (608) 227-5199
Cell (414) 659-1879
FAX: (414) 227-5043

Office of Justice Assistance:
Lance Horozewski, Compliance Monitor
Juvenile Justice Unit
1 S. Pinckney Street, Suite 615
Madison, WI 53703-2874
Email: lance.horozewski@wisconsin.gov
Phone 608-264-6386
FAX: 608-266-6676

Date 6/25/10
Rick Raemisch
Secretary
Wisconsin Department of Corrections

Date 6/29/10
David O. Steingraber
Executive Director
Wisconsin Office of Justice Assistance
Chapter DOC 346

SECURE DETENTION FOR JUVENILES

Subchapter I — General Provisions

DOC 346.01 Purpose and authority. The purpose of this chapter is to protect the health, safety, and welfare of all juveniles held in juvenile detention facilities and the juvenile portion of county jails, by establishing minimum standards for these facilities, and ensuring compliance with 42 USC 5601 to 5671 and 28 CFR Part 3. This chapter is promulgated under the authority of s. 938.22 (2) (a), Stats., and implements s. 301.36, 301.37 and 938.209, Stats.

History: CR 09-439: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.02 Applicability. The provisions of this chapter apply to juvenile detention facilities and juvenile portions of county jails. Unless otherwise specified, s. DOC 346.14 applies only to facilities that were constructed or substantially remodeled after October 1, 1994.

History: CR 09-439: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.03 Definitions. In this chapter:

1. “Cell” means a secure room designed and used as a sleeping room for one or 2 juveniles.

2. “Construction plans” mean the site plans, drawings, and specifications for construction or remodeling of a facility.

3. “Contraband” means any item not allowed in a facility by the superintendent.

4. “Day room” means an area usable and accessible by juveniles, contiguous to each group of cells, and designed and used for leisure activities.

5. “Department” means the department of corrections.

6. “Dormitory” means a secure area designed for three or more juveniles and used for sleeping and day room activities.

7. “Facility” means either a juvenile detention facility or the juvenile portion of a county jail.

8. “Facility program” means a written narrative that describes basic operational functions and spaces needed to meet those functions.


10. “Holding room” means a secure room designed for holding one or more juveniles of the same gender for the purpose of processing admissions, reissues, investigations or court appearances.

11. “Juvenile” has the meaning given in s. 938.02 (10m), Stats.

12. “Juvenile detention facility” has the meaning given in ch. 938, Stats., and includes a stand alone facility or a facility located in the same building or on the same grounds as a county jail.

13. “Juvenile portion of a county jail” means an area which is used for the detention of juveniles and which is part of a county jail.

14. “Living area” means the part of a juvenile detention facility normally occupied by juveniles, including day rooms, multipurpose space, and adjacent control centers.

15. “Multi-purpose space” means activity areas designed and used for education, recreation, library services, and other juvenile program activities. Multi-purpose space does not include cells, day rooms or dormitories.

16. “Officer” or “juvenile detention officer” has the meaning given in s. 165.85 (2) (bt), Stats.

Note: Chapter HSS 346 was renumbered Chapter DOC 346 and revised under s. 13.93 (2m) (6), 2, 6, and 7, Stats., Register, April, 1990, No. 412. Chapter DOC 346, as it existed on October 21, 2010 was repealed and a new chapter DOC 346 was created effective November 1, 2010.
(17) "Privileged mail" means any written communication between a juvenile and an attorney, court, government or facility official.

(18) "Rated bed capacity" means the design capacity approved by the department under this chapter, based on single occupancy cells under s. DOC 346.14 (2), double occupancy cells under s. DOC 346.15, and dormitories under s. DOC 346.14 (3).

(19) "Receiving cell" means a cell used to segregate a juvenile for purposes of admission, release, discipline, investigation or court appearances.

(20) "Superintendent" means:
(a) The individual designated to be in charge of a juvenile detention facility under s. 938.22 (3) (a), Stats., or the director as specified in s. 938.22 (3) (b), Stats.; or
(b) In the case of the juvenile portion of the county jail, the sheriff of a county in which the jail is located pursuant to s. 59.27 (1), Stats.

(21) "Undergarments" means underwear and socks and includes bras for females.

(22) "Unencumbered space" means usable space that is not encumbered by furnishings or fixtures.

History: CR 89-039: cr. Register October 1989 No. 9, eff. 1-1-90.

DOC 346.04 Operational plan. (1) A facility may hold juveniles in secure custody, it shall have a mission statement and a written operational plan which has been approved by the department under ss. 938.22 (2) (a), Stats., and which meets the requirements of 42 USC 3601 to 3671 and 28 CFR Part 31 and the standards specified in this chapter. No plan may be implemented until the department has approved the plan, under ss. 938.22 (2) (a), Stats.

(2) The operational plan shall contain all of the following components:
(a) A statement setting forth the mission of the facility.
(b) A designation of whether the facility will operate as a juvenile portion of the county jail or a separate unit within a juvenile detention facility.
(c) Policies and procedures to ensure, against any contact between juveniles and adult inmates in all areas of the facility, including sallyports, entrances, booking, intake, living areas, elevators, visiting areas, staircases, medical areas, recreational areas, and fingerprinting areas.
(d) Policies and procedures to ensure immediate security backup in emergency situations.
(e) Policies and procedures for feeding and feeding rooms, toilet, recreation, recreational programming, religious programming, sanitation, searches, staffing, suicide prevention, telephone, use of restraints, use of volunteers, and visiting.
(f) Policies and procedures to ensure compliance with the standards specified in this chapter.

(3) Prior to submitting the operational plan to the department for approval under s. 938.22 (2) (a), Stats., the superintendent shall distribute the plan for review and comment to the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats.

History: CR 89-039: cr. Register October 1989 No. 9, eff. 1-1-90.

DOC 346.05 Annual meeting. (1) The superintendent shall conduct a meeting at least annually to discuss and review the operation of the facility and other juvenile justice issues. The superintendent shall invite the sheriff, juvenile court judge, chief intake worker, social or human services director, and the director of the county department of community programs appointed under s. 51.42 (4), Stats., and any other appropriate persons.

(2) The superintendent shall maintain a record of the proceedings of the meeting under sub. (1) for review by the department.

History: CR 69-039: cr. Register October 1969 No. 5, eff. 11-1-69.

DOC 346.06 Records and reporting. (1) The superintendent shall maintain a facility register which shall include identifying information for all juveniles, including name, age, gender, race, name of parents or guardian, alleged offense, detaining authority, time and date of admission, authority for admission, date and time of release, and disposition of the juvenile after release.

(2) The facility shall maintain records of the date, time and circumstances of all of the following events involving juveniles:
(a) Death, attempted suicide which requires emergency medical care or hospitalization, or physical injury.
(b) Escape or attempted escape.
(c) Significant damage to the facility.
(d) A daily record of each juvenile's behavior, medical history, disciplinary actions, violations, room assignment, care requirements and other special conditions.

(3) Records shall be maintained in a confidential manner as follows:
(a) Records shall be secured in locked desks or filing or storage cabinets.
(b) Records shall be maintained and stored separately from records of persons 18 or older.
(c) No person except those authorized through a court order or authorized facility or department personnel may have access to information in the records or be permitted to inspect the records.
(d) Whenever a person is allowed access to a juvenile's file, a notation which includes the person's name, date of access and authorization for access shall be made in the file.

(4) The superintendent shall notify the department's regional detention facilities specialist within 24 hours excluding weekends and holidays, after any of the following occurs:
(a) The death of a juvenile.
(b) The provision of medical treatment to a juvenile for a life-threatening injury or the admission of a juvenile to a hospital, not including an emergency room admission or admission for treatment and evaluation under ch. 51, Stats.
(c) The escape of a juvenile.
(d) Any significant damage to the facility.
(e) Any change in the superintendent of the facility.

(5) The superintendent shall give the department at least 30 days notice of any intention to terminate the operation of the facility.

(6) The superintendent shall promptly furnish to the department all requested information.

History: CR 89-039: cr. Register October 1989 No. 9, eff. 11-1-90.

DOC 346.07 Variances. (1) The department may grant a variance to a provision of this chapter, except that no variance may be granted to the provisions of ss. DOC 346.14 (1) and (3) and 346.15 (3) (a) and (d).

(2) In order to obtain a variance, the superintendent shall demonstrate in writing that strict enforcement of the rule would result in unreasonable hardship for administration of the facility and that the variance would provide equivalent or better protection for the health, safety, welfare and rights of juveniles and the public.

(3) The department may impose specific conditions including reasonable time limits on a variance in order to protect the health, safety, rights or welfare of juveniles or the public.

(4) Violation of any condition under which a variance is granted constitutes a violation of this chapter. Upon finding that there has been a violation of a condition of the variance, the...
department may revoke the variance and require strict enforcement of the rule.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter II — Admission and Release

DOC 346.08 Admission criteria for juvenile detention facilities. (1) Juveniles may be admitted to a juvenile detention facility under the provisions of applicable Wisconsin statutes, including chs. 938 and 48, Stats., or other court order.

(2) Persons who are 18 years of age or older may not be admitted or held in a juvenile detention facility, unless they are currently only under juvenile court jurisdiction under ch. 938 or 48, Stats.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.09 Admission. (1) No juvenile may be placed in a juvenile detention facility unless the facility meets the requirements of this chapter and is approved by the department.

(2) An approved facility shall receive juveniles into secure detention 24 hours a day, 7 days a week.

(3) As soon as practicable following admission, each juvenile shall be required to take a bath or shower.

(4) A juvenile who appears to be seriously ill or injured, who exhibits significant mental or emotional distress, or who appears too intoxicated or incapacitated due to controlled substance or alcohol abuse may not be confined in the facility unless a health care professional has treated and approved the juvenile for confinement.

(5) The superintendent shall provide to juveniles upon admission a copy of the rules of the facility and a description of the services and programs of the facility. The superintendent shall assure that all juveniles have effective access to the information.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.10 Classification. The operational plan under s. DOC 346.04 shall contain policies and procedures creating a classification system based on legal status, gender, age, behavior, information concerning present offense, current and prior detention history, medical condition, mental health, and other criteria designed to provide for the protection and safety of juveniles, staff and the community. In addition, the classification system shall identify specific criteria for the exclusion of juveniles from being housed in dormitories under s. DOC 346.14 (3) or double cells under s. DOC 346.15.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.11 Contact. (1) There may be no physical or visual contact between juveniles and adult inmates in a juvenile detention facility.

(2) There may be no sustained sound contact between juveniles and adult inmates in a juvenile detention facility.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.12 Release. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the release of juveniles from custody, including all of the following components:

(1) Verification of identity of juvenile.

(2) Verification of authority to release.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter III — Physical Plant

DOC 346.13 Construction plans. (1) A county which intends to build or remodel a facility shall do all of the following:

(a) Submit a letter of intent to the department before design development begins.

(b) Submit the facility program to the department for review and comment. The facility program shall include the following:

1. A statement of the facility mission and goals.

2. A description of needed spaces in terms of size, features and their relationship to one another.

3. Staff estimates.


(c) Submit the design development documents to the department for review and comment.

(d) Submit to the department for review and approval, two complete sets of construction plans of the facility.

(e) Ensure that the construction plans are approved by the department of commerce for compliance with state building code.

(2) The county may publish the bid documents only after receiving the department's approval of the construction plans.

(3) Upon review and approval the department shall return to the county one set of construction plans and retain the second set for department records. The department shall return unapproved construction plans.

history: CR 09-030: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.14 Physical environment. (1) Juvenile housing. (a) Each juvenile shall have a separate bunk or bed in a cell which meets the requirements of sub. (2) or s. DOC 346.15, or in a dormitory which meets the requirements of sub. (3). A facility may not exceed its rated bed capacity.

(b) The total number of juveniles housed in double cells under s. DOC 346.15 and in dormitories under sub. (3) may not exceed 75% of the rated bed capacity of the facility.

(2) Cells. (a) Except if s. DOC 346.15 applies, all cells for juveniles in a facility shall be designated and used for single occupancy only.

(b) Unless s. DOC 346.15 applies, cells shall have minimum floor area of 35 square feet of unencumbered space. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

(c) Unless s. DOC 346.15 applies, each cell shall have all of the following:

1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of a similar strength.

2. An unbreakable, institution-type mirror.

3. A detention strength, metal, institution-type wash basin and toilet. The wash basin and toilet may be combined in one unit. The wash basin shall have hot and cold running water.

4. A rigidly constructed shelf-type table and seat which are bracketed to the wall or bolted to the floor.

5. Unless s. DOC 346.15 applies, 2 or more nonremovable, collapsible, detention strength clothing and towel hooks.

6. Light fixtures of detention strength and providing at least 30 foot candles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.

(d) There shall be no exposed heating pipes, radiators or controls in cells.

(e) There shall be a release system designed to unlock cell doors individually and as a group from a single point outside the confinement area.

(3) Dormitories. (a) A juvenile detention facility may use dormitories in addition to cells for the secure detention of juveniles.

(b) Each dormitory shall be designed for a minimum of 3 and a maximum of 8 juveniles.

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(c) If a juvenile detention facility contains one dormitory, it shall have a minimum of 2 cells designed and used for single occupancy.

(d) If more than one dormitory is built, the number of dormitory beds may not exceed 50% of the rated bed capacity of the juvenile detention facility.

(e) If, based on all the criteria under s. DOC 346.10, a juvenile detention facility determines that placement of a juvenile in a dormitory may jeopardize the health or safety of the juvenile, other juveniles in the facility, staff or the community, the juvenile may not be placed in a dormitory.

(f) Each dormitory shall have all of the following:
1. A minimum combined sleeping area and adjacent dayroom space of 70 square feet per juvenile based on rated bed capacity of the dormitory, excluding toilets, showers and lavatories.
2. A minimum floor to ceiling height of 8 feet.
3. Non-locking doors on sleeping rooms, if separate sleeping rooms are provided.
4. Unrestricted physical access to the day room, lavatories and toilets.
5. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor for each juvenile based on the rated bed capacity of the dormitory.
6. For facilities constructed or substantially remodeled after November 1, 2010, all upper bunks equipped with an anti-rollout plate.
7. Detention strength washbasins and toilets.
8. Unbreakable, detention strength mirrors sufficient for the number of juveniles confined.
9. Detention strength tables and seating in the day room based on the rated bed capacity of the dormitory.
10. Two nonremovable, collapsible, detention strength clothing and towel hooks for each juvenile confined based on the rated bed capacity of the dormitory.
11. Detention strength light fixtures that provide at least 30 footcandles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.

(4) DAY ROOM. (a) Each day room shall have all of the following:
1. A minimum floor area of 35 square feet for each juvenile based on the rated bed capacity of the adjacent group of cells. In addition, each day room shall have a minimum of 70 square feet of unencumbered space.
2. Detention strength light fixtures that provide at least 30 footcandles at 30 inches above the floor.
3. Adequate furnishings and equipment for leisure time activities required under this chapter.
4. Detention strength tables and seating based on the rated bed capacity of the adjacent cells.
(b) There shall be in the day room no exposed heating pipes, radiators or controls which are accessible to juveniles.

(5) HOLDING ROOMS. (a) Holding rooms shall be located in an area that allows continuous staff observation or electronic video surveillance of juveniles.
(b) Each holding room shall have all of the following:
1. Detention strength, rigidly constructed seats or benches bracketed to the wall or bolted to the floor or seats or benches of masonry construction of similar strength.
2. A detention strength, metal, institution-type wash basin and toilet.
3. A minimum floor area of 50 square feet of unencumbered space for 5 or fewer occupants and an additional 10 square feet of unencumbered space for each additional occupant.
4. Detention strength light fixtures that provide at least 30 footcandles at 30 inches above the floor.
(c) Holding rooms are not included in the rated capacity of a facility.
(d) Juveniles may not be held in a holding room for more than 24 continuous hours.
(e) Holding rooms outside the secure perimeter shall comply with the requirements of this section.

(6) RECEIVING CELLS. (a) All receiving cells shall be designed and used for single occupancy.
(b) Each receiving cell shall have all of the following:
1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction or similar strength.
2. A detention strength, metal, institution-type wash basin and toilet. The wash basin and toilet may be combined in one unit. The wash basin shall have hot and cold running water.
3. Detention strength light fixtures that provide at least 30 footcandles at 30 inches above the floor. Lights shall have a dimming capability or there shall be a nightlight to allow for comfortable sleeping. There shall be enough illumination for observation of juveniles during security checks.
4. A minimum floor area of 35 square feet of unencumbered space. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.
(c) Receiving cells are not included in determining the rated capacity of a facility.
(d) Juveniles may not be held in a receiving cell for more than 72 continuous hours.

(7) NATURAL LIGHTING. Cells under sub. (2) and s. DOC 346.15 and dormitories under sub. (3) shall be provided with natural light in accordance with the International Building Code, s. 1204 as adopted by the department of commerce under s. Comm 61.05 (1). Artificial light may not be used as an alternative to the natural light requirements under the International Building Code.

(8) EXTERIOR WINDOWS. (a) This subsection applies to all windows that lead to the exterior of the facility or to an area outside the secure perimeter of the facility.
(b) All exterior windows shall be translucent or shall be located to prevent persons outside the secure perimeter of the facility from observing juveniles within the facility.
(c) Each exterior window that has an opening in any direction in excess of 5% shall be covered with security steel grills to prevent escape.
(d) If an exterior window is accessible to juveniles and opens, the window shall be mounted in a detention strength frame and shall be covered on the inside with a 1,600 pound per linear inch tensile strength security screen of .047 mil. wire diameter to prevent the passage of contraband.
(e) If an exterior window is not accessible to juveniles and opens, the screen shall have a tensile strength of at least 800 pounds per linear inch and shall be made of wire of at least .028 mil. diameter.
(f) If an exterior window does not open, whether or not it is accessible to juveniles, the security screen required under par. (d) or (e) may be omitted if the window is mounted in a detention strength frame and the pane is security glass of sufficient strength to resist breakage and prevent the passage of contraband.

(9) SHOWERS. There shall be at least one shower for every 8 juveniles. There shall be an adequate supply of hot and cold water so that juveniles shall be permitted to shower on a daily basis.

(10) MULTI-PURPOSE SPACE. Facilities shall contain multi-purpose space which shall have a minimum of 300 square feet of floor area or provide 35 square feet of floor area for the maxi-
maximum number of juveniles expected to use the space at one time, whichever is greater.

11 Classroom space. For juvenile detention facilities which are constructed or substantially remodeled after November 1, 2010, the space shall be classroom space designed in conformity with local or state educational requirements.

12 Healthcare area. If medical or dental services are provided in the facility, there shall be sufficient space, equipment, supplies and materials for the performance of primary health care delivery in a confidential and private manner. The superintendent shall consult with the health care provider to determine the adequacy of the space, equipment, supplies and materials.

13 Outdoor recreation space. If provided, there shall be a minimum of 70 square feet of outdoor recreational space per occupant.

The operational plan under s. DOC 346.04 shall contain policies and procedures for the safe and secure use of outdoor recreational area.

14 Storage space. (a) Sufficient space shall be provided in the facility to store and issue clothing, bedding, cleaning supplies and other items for daily operations.

(b) Space shall be provided for storing the personal property of juveniles safely and securely.

15 Visiting space. Sufficient space for visitation shall be provided.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10. Correction in numbering of (2) (f) 6. made under s. 13.92 (4) (a) 1., Stats., Register October 2010 No. 658.

DOC 346.15 Double ceiling. (1) A juvenile detention facility may use cells for double occupancy. This section does not apply to a juvenile portion of a county jail.

(2) If a juvenile detention facility determines based on the criteria under s. DOC 346.10 that placement of a juvenile in a double cell may jeopardize the health or safety of the juvenile, other juveniles in the facility, staff or the community, the juvenile may not be placed in a double cell. If a juvenile detention facility determines based on all the criteria under s. DOC 346.10 that placement of 2 particular juveniles in a double cell may jeopardize the health or safety of either juvenile, other juveniles in the facility, staff or the community, those juveniles may not be placed together in the double cell.

(3) In addition to the requirements for single occupancy cells under s. DOC 346.14 (2) and before a cell may be used for double occupancy, all of the following conditions shall be met:

(a) Minimum floor area. 1. In juvenile detention facilities which were constructed or substantially remodeled between October 1, 1994 and November 1, 2010, a cell shall have a minimum floor area of 70 square feet. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

2. In juvenile detention facilities which were constructed before October 1, 1994 and have not been substantially remodeled after October 1, 1994, a cell shall have a minimum floor area of 54 square feet. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

3. In juvenile detention facilities which are constructed or substantially remodeled after November 1, 2010, a cell shall have a minimum floor area of 70 square feet of unnumbered space.

(b) Receiving cells. Receiving cells may not be used for double occupancy.

(c) Single occupancy cells. Each juvenile detention facility shall maintain a minimum of 2 cells which are designed and used for single occupancy only.

(d) Double occupancy cells. A juvenile detention facility may not exceed 75% double occupancy of the total number of cells, excluding receiving cells and holding rooms.

(e) Clothing hooks. Each cell shall contain a minimum of two nonremovable, collapsible, double occupancy strength clothing and towel hooks for each occupant.

(f) Anti-rollout plates. For facilities constructed or substantially remodeled after November 1, 2010, all upper bunks shall be equipped with an anti-rollout plate.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.16 Fire protection. (1) The operational plan under s. DOC 346.04 shall contain policies and procedures relating to fire protection and evacuation, including evacuation of persons with disabilities and appropriate training of staff. The policies and procedures shall comply with local fire department recommendations.

(2) The evacuation plan shall be posted in a conspicuous place for staff to view.

(3) The facility shall have and shall properly maintain fire alarms, smoke and thermal detectors, and fire extinguishers. The facility shall place this equipment in accordance with the advice of the local fire department.

(4) All staff shall be trained in the proper use of the equipment in sub. (3) and in emergency rescue and evacuation procedures. Documentation of such training shall be maintained in the facility files.

(5) There shall be fire inspection services at least annually with documentation of such inspection in facility files.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.17 Sanitation. (1) Food service. (a) No person who is known to be infected with a disease in a form that is communicable by food handling may be employed or work as a food handler in a facility. If the superintendent suspects that a person has a communicable disease that may be transmitted by food handling, the superintendent shall exclude the person from working with food and, in the case of a reportable communicable disease defined under s. DHS 145.03 (4), shall notify the local health authority immediately.

(b) No person may use tobacco in food storage or food preparation areas, or while serving food.

(c) All persons who work in food service areas shall wear clean garments and clean caps or hairnets, and shall keep their hands clean at all times when engaged in the handling of food, drink, utensils or equipment. Particular attention shall be given to the cleaning of fingernails.

(d) Adequate and convenient hand washing facilities shall be provided for use by persons working in food service areas, including hot and cold running water, soap and approved sanitary towels. Use of a common towel is prohibited.

(e) All milk and milk products served shall be pasteurized and shall be from sources certified as grade A.

(f) No spoiled or contaminated food may be used.

(g) All raw vegetables, fruits and poultry shall be thoroughly washed in clean water.

(h) All purchased meats and poultry shall be from sources that are subject to federal or state inspection.

(i) All ice used for cooling drinks or food by direct contact shall be from a safe public water supply and stored and handled to prevent contamination.

(j) Food shall be prepared by methods that conserve nutritive value, flavor and appearance.

(k) Food shall be covered or protected when in transit.
(L) Food and drink shall be stored in a clean, well-ventilated place protected from insects, dust, vermin, overhead leakage, sewage backflow and other contamination.

(m) Staple foods and bulk supplies of flour, sugar and similar ingredients shall be stored in metal or plastic containers with tight-fitting covers once the original container is opened.

(n) Food shall be stored at least 6 inches above the floor on clean surfaces to permit cleaning underneath and to protect from splash and other contamination.

(o) All readily perishable foods, except when being prepared or served, shall be refrigerated at or below 40°F.

(p) Dishes, glassware, utensils and other food use or service equipment shall be stored in an area protected from contamination.

(q) Tables, cooking and working surfaces and food contact surfaces of equipment, including multi-use utensils, shall be thoroughly cleaned and sanitized after each usage.

(r) The walls, floors and ceilings of all rooms in which food or drink is stored, prepared or served, or in which utensils are washed shall be kept clean and in good repair.

(s) Ventilation fans, oven hoods and ducts shall be kept clean and free of grease.

(t) Animals shall be kept out of the kitchen, pantry or places where food is handled or prepared.

(u) All garbage and kitchen refuse which is not disposed of through a garbage disposal unit connected to the sewerage system shall be kept in leak-proof, nonabsorbent containers with close-fitting covers in areas separate from those used for preparation and storage of food. The contents shall be removed as often as necessary to prevent decomposition and overflow. Garbage containers shall be reasonably clean and show no evidence of accumulated grease of longstanding.

(2) UTENSIL CLEANING. (a) In manual washing, dishes and utensils shall first be pre-washed and then shall be washed in hot water at a temperature of at least 160°F, containing an adequate amount of an effective soap or detergent. Water shall be kept clean by changing it frequently. Sanitizing all utensils following hand washing shall be done by one of the following:

1. Submerging all utensils for 30 seconds in clean water maintained at a temperature of 170°F or more.

2. Submerging all utensils for rinsing in hot water at a minimum temperature of 160°F to remove soap or detergent, then submerging for at least 2 minutes in a hypochlorite solution with a chlorine solution concentration of at least 100 parts per million. A different chemical sanitizing solution may be used if approved by the department. Soaps, water softeners, washing compounds and detergents shall not be added to sanitizing solutions. All utensils shall be air-dried after sanitizing.

(b) Mechanical washing of utensils shall be done as follows:

1. Utensils shall be stacked in racks or trays so as to avoid overcrowding and in such a manner as to ensure complete washing contact with all surfaces of each article.

2. The wash water temperature of utensil washing machines shall be held from 140°F to 150°F.

3. A detergent shall be used in all washing machines.

4. For sanitizing in a spray-type machine, dishes shall be subjected to a rinse period of 10 seconds or more at a temperature in the supply line of the machine of at least 180°F. For sanitizing in an immersion-type machine, dishes shall be submerged for 30 seconds or more with the water at the temperature of 170°F or more. There shall be a constant change of water through the inlet and overflow.

5. Thermometers shall be located in both the wash compartment and rinse water line, in such locations as to be readily visible. Thermometric control of the temperature of the rinse water shall be provided in new equipment.

6. The pressure of the water used in the spray washing and rinsing shall be 15 to 25 pounds per square inch at the machine nozzles.

7. Utensils shall be allowed to air-dry in racks or on drainboards.

(3) INSECT AND RODENT CONTROL. (a) All outside openings shall be covered with wire screening of not less than number 16 mesh or its equivalent and shall be properly maintained to prevent entry of insects. Screen doors shall be self-closing.

(b) All means necessary for the elimination of vermin shall be used.

(c) All poisonous compounds used in the extermination of rodents or insects shall be clearly labeled as poisons. Poisonous compounds shall be stored in a locked area separate from food, kitchenware, and medications.

(d) Poisonous or toxic materials may not be used in a way that contaminates food, equipment, or utensils, or in a way that constitutes a hazard to juveniles, staff or other person, or in a way that is not in full compliance with the manufacturer’s labeling.

(4) WATER SUPPLY. All water shall be obtained from a safe public water source.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter IV — Staffing

DOC 346.18 Employment practices. Employment practices of each facility shall be in compliance with subch. 11 of ch. 111, Stats., the equal employment opportunity act of 1972 (42 USC 2000e – 2000e – 17) and s. DHS 5.07 (1).

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.19 Job descriptions. There shall be written job descriptions kept on file for all staff and prior employment references shall be verified and documented in the employee’s personnel record.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.20 Health qualifications for employment. Staff shall receive a medical examination by a physician at the time of initial employment. Personnel records shall contain verification of the medical examination.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.21 Education and training. (1) Within the first 30 days of employment, all security staff shall receive at least 40 hours of orientation training which shall be documented in the employee’s personnel record and which shall include but not be limited to the following:

(a) Facility policies and procedures.

(b) Information on the administrative rules governing secure detention of juveniles.

(c) First aid, the use of emergency equipment, and medical screening.

(d) Supervision and control of juveniles.

(e) Suicide prevention, mental health and crisis intervention.

(f) Health screening and care and medications.

(g) Use of restraints and control devices.

(h) Communications skills.

(2) Officers shall receive at least 8 hours of annual training on the care and custody of juveniles, suicide prevention, mental health, crisis intervention, medications, health screening at the time of admission, and use of restraints and control devices.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.22 Staffing plan in juvenile detention facilities. (1) The superintendent of a juvenile detention facility shall submit to the department for approval a staffing plan which specifies methods by which adequate staffing will be provided to ensure the health, safety and welfare of the juveniles.
(2) In juvenile detention facilities:
   (a) There shall be at least one officer on duty at all times in each
       living area where juveniles are present.
   (b) There shall be no less than one officer supervising a maxi-
       mum of 15 juveniles in the living area. Additional officers shall
       be available at all times as back up.
   (c) There shall be no less than 2 officers on duty in the facility
       at any time when juveniles are present and at least one of those
       officers shall be in the living area. In a facility that is co-located
       with a county jail the superintendent may substitute for the second
       officer an officer whose duties do not include the supervision of
       adult inmates.
   (d) An officer of the same gender as the juveniles being
       admitted or held in custody shall be on duty in the living area.
   (e) No officer responsible for supervision of juveniles may
       during the same work shift have responsibility for supervision of
       adult inmates in a county jail.

(3) Staff may not accept any gift or gratuity from a juvenile or
    juvenile’s family.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter V — Health Care

DOC 346.23 Health screening and care. (1) The facility shall provide necessary medical and mental health care and emergency dental care while the juvenile is in custody. Consent of a juvenile’s parent, guardian or legal custodian shall be required for treatment, except in the event of an emergency during which a parent, guardian or legal custodian is not available.

(2) The facility shall review the current health of every juvenile admitted to the facility in accordance with all of the following:
   (a) The facility shall perform health screening upon admission.
   (b) The facility shall use a health screening form which has been developed in conjunction with health care professionals.
   (c) The health screening form shall be designed to obtain health information, including the juvenile’s medical, mental, and dental condition, current medications, medical illnesses or disabilities, mental illnesses, developmental disabilities, substance abuse problems, and suicide risk.

(3) The operational plan under s. DOC 346.04 shall contain policies and procedures for juvenile health care, including all of the following components:
   (a) The names of staff who are designated with the authority to make health care decisions, including emergency medical and dental care.
   (b) The completion of health screening in a manner which ensures the privacy of a juvenile and confidentiality of information.
   (c) Names, addresses and telephone numbers of health care professionals who provide emergency and other health care services, including counseling, shall be listed and available to staff.
   (d) Referral of juveniles to health care professionals or to agencies which provide health care or counseling at the time of admission and throughout the period of detention.
   (e) Provision of non-emergency health care, including use of a juvenile’s personal physician.
   (f) A schedule of access to routine health care which is provided to juveniles.
   (g) Submission, processing, and disposition of requests for health care by juveniles.
   (h) Provision of a special diet if ordered by a health care professional.
   (i) The superintendent shall maintain agreements with health care professionals.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.24 Medications. (1) The operational plan under s. DOC 346.04 shall contain policies and procedures developed in consultation with health care professionals, relating to the control, administration, and delivery of prescription and nonprescription medications, including all of the following components:
   (a) Process by which security staff or health care professionals verify and determine the necessity of medications brought in by juveniles or other persons for a juvenile.
   (b) Process for continuing administration of verified medications.
   (c) Process for the inventory and secure storage of all medications brought into the facility.
   (d) Consent of a juvenile’s parent, guardian or legal custodian shall be required for treatment, except in the event of an emergency during which a parent, guardian or legal custodian is not available.
   (e) Administration or delivery of prescription and nonprescription medications to juveniles, including identification of staff authorized by the facility to do so.
   (f) Documentation of the administration or delivery of medication to a juvenile. The documentation shall include the type and dosage of medication, the name of the practitioner who prescribed the medication, the name of the person who administered or delivered the medication, the date and time of administration or delivery, and any refusal by a juvenile of recommended or prescribed medications.
   (g) Return or disposal of a juvenile’s unused medications inventoried upon admission or unused non-facility provided medications received by the juvenile after admission.
   (h) Inventory and disposal of unused facility provided medications upon the juvenile’s release.

(1) Delivery of insulin for juveniles who are insulin dependent diabetics.

(2) Drugs requiring parenteral administration shall be prescribed by a practitioner as defined under s. 961.01 (19), Stats., and administered by a health care professional, except juveniles who are insulin dependent diabetics may be permitted to self-administer insulin injections.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.25 Communicable disease control. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the care, treatment and supervision of juveniles who may have communicable diseases, including all of the following components:
   (1) Provision of treatment and supervision of juveniles during isolation or quarantine under s. 252.06 (6) (b), Stats.
   (2) Documentation of the need for isolation or quarantine under s. 252.06 (6) (b), Stats., in the juvenile’s confidential medical file.
   (3) Provision of laboratory screening for juveniles who may have been exposed to a communicable disease, if ordered by a health care professional.
   (4) Screening for tuberculosis shall be performed on all juveniles in custody for more than one week if ordered by a health care professional. Separate parental consent is not required for ordered tuberculosis screening.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.26 Suicide prevention. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the supervision and housing of juveniles who may be at risk of seriously injuring themselves, including all of the following components:
   (1) Assessment of a juvenile’s suicide risk at admission and documentation of the results.
(2) Designation of security staff or health care professionals who may assess a juvenile’s level of suicide risk and who may authorize placement on or removal from a suicide watch status for juveniles who are suicide risks.

(3) Identification of areas within the facility where juveniles who are suicide risks shall be housed.

(4) Referral of juveniles who are suicide risks to a mental health professional.

(5) Documentation of observation of juveniles under s. DOC 346.44.

(6) Communication between health care professionals and security staff regarding the status of a juvenile who is a suicide risk.

(7) Intervention of a suicide in progress, including first aid measures.

(8) List of persons to be notified in case of potential, attempted or completed suicides.

(9) Documentation of actions and decisions regarding juveniles who are suicide risks.

(10) Annual training plan for officers and other staff.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.27 Crisis intervention. The operational plan under s. DOC 346.04 shall contain policies and procedures for the provision of professional services for a juvenile displaying mental distress, including withdrawal, uncontrolled emotions or self-destructive behavior.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.28 Medical records. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to medical records of juveniles, including all of the following components:

(1) Juvenile medical records shall be kept separate from other records, including custodial and adult records, and shall be maintained in a confidential manner in accordance with ss. 51.30, 146.82, and 252.15, Stats., and other applicable state or federal laws.

(2) Records shall be maintained in locked storage and accessible only by designated staff.

(3) No person except those authorized under s. 51.30 or 146.82, Stats., or other applicable state or federal law may have access to information in the records or be permitted to inspect the records.

(4) Whenever a person is allowed access to a juvenile’s confidential medical record, a notation shall be made in the file which includes the person’s name, date of access and authorization for access.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.29 Nutrition. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the nutrition of juveniles, including all of the following components:

(1) The facility shall provide nutritious and quality food for all juveniles. Menus shall satisfy generally accepted nutritional standards.

(2) Milk shall be offered as a beverage at every meal.

(3) A juvenile may abstain from any foods that violate the juvenile’s religion. Consistent with available resources, the facility shall provide a substitute from other available foods from the menu served at the meal. The substitutions shall be consistent with sub. (1).

(4) Daily menus of food actually served shall be kept on file for at least 60 days and shall be made available to the department upon request.

(5) Menus and portion sizes shall be reviewed at least annually by a dietitian to ensure compliance with nationally recommended food allowances. Reports shall be available to the department upon request.

(6) Supplementary food or modified diet, as ordered by a physician, shall be provided for those juveniles who have special needs.

(7) A minimum of 3 meals, 2 of which are hot, shall be provided at regular meal times during each 24 hour period with no more than 14 hours between the evening meal and breakfast. Provided basic nutritional standards are met, the superintendent may permit variations based on weekend and holiday food service demands.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter VI — Resources for Juveniles

DOC 346.30 Personal hygiene. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the personal hygiene of juveniles, including all of the following components:

(1) Toilet articles sufficient for the maintenance of cleanliness and hygiene, including but not limited to, toothpaste and toothbrush, soap, comb, toilet paper, shampoo, shaving materials, and feminine hygiene materials shall be provided. There shall be no common use of these items.

(2) Juveniles shall be permitted to shower on a daily basis.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.31 Personal property. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the inventory, storage and return of a juvenile’s personal property, including all of the following components:

(1) Items of personal property, including money, which are taken from the juveniles shall be listed in writing, stored in a safe place and returned to the juvenile upon release. Each juvenile and an employee shall sign the written property list at the time of admission and release. If a juvenile cannot or will not sign the property list, a written notation to that effect shall be placed on the list and verified by one witness.

(2) Provision for the possession of authorized personal property.

(3) Provision for the return of juvenile’s property.

(4) Provision for the disposal of unclaimed or unauthorized property.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.32 Clothing and linen. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to the clothing and linen which a juvenile is permitted to have, including all of the following:

(1) CLOTHING. All of the following shall be provided:
(a) A set of clean clothing if juveniles are not allowed to wear their personal clothing.
(b) Clean undergarments which shall be issued daily.
(c) Clean outer garments which shall be issued a minimum of twice weekly.

(2) LINEN. All of the following shall be provided:
(a) A clean and sanitized, fire-retardant mattress and pillow, including integrated units, which shall be kept clean and in good repair.
(b) Two sheets or one sheet and one mattress cover and pillowcases, which shall be exchanged and cleaned weekly.
(c) A towel and washcloth, which shall be exchanged and cleaned twice weekly.
(d) A clean, fire-retardant blanket, which shall be laundered monthly and before reissue to another juvenile.

History: CR 09-039: cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.33 Mail. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to written communications with juveniles.
contact between juveniles and their families, friends, attorneys, the court system, governmental officials and others, including all of the following components:

(1) The amount of mail a juvenile may send or receive may not be limited unless the reasons for such limitation are documented in the juvenile’s record.

(2) Privileged correspondence may not be limited.

(3) Mail to the juvenile shall be delivered on the same day that it is received at the facility.

(4) Appropriate writing materials shall be provided to juveniles upon request.

(5) Postage for a minimum of 2 non-privileged letters a week shall be provided for each juvenile. Postage for privileged correspondence may not be limited.

(6) Incoming privileged mail may be opened and inspected in the presence of the juvenile to whom the mail is addressed. Privileged mail may not be read.

(7) Juveniles shall be provided notice upon admission that their non-privileged incoming letters and packages may be inspected for contraband.

(8) Provision for staff inspection and reading of non-privileged incoming and outgoing mail.

(9) Juveniles shall be notified of confiscated mail.

(10) Mail which is confiscated shall be inventoried. Confiscated mail shall be returned to the sender, disposed of, or delivered to the juvenile upon release. A record of confiscated mail shall be maintained and include the names of the sender and receiver, the dates of receipt and disposition, and the reasons for confiscation and disposal.

(11) Cash, checks or money orders shall be received, inventoried and credited to the juvenile’s account or placed in the juvenile’s secured property.

(12) Mail addressed to a released juvenile shall be forwarded unopened to the juvenile or returned to the sender or post office if no forwarding address is available.

**DOC 346.34 Telephone.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to juvenile access to the telephone, including all of the following components:

(1) Upon admission, the juvenile shall be given an opportunity as soon as possible to make a minimum of 2 telephone calls to his or her parents, legal guardians, foster parents, custodians or legal counsel.

(2) Other than those under sub. (1), a juvenile shall be given the opportunity to make telephone calls to his or her parents, legal guardians, foster parents, custodians or legal counsel, based on the facility’s schedule, telephone availability, and personal constraints. Reasons for limiting access to the telephone shall be documented.

(3) A juvenile shall be allowed to make at least one 10-minute telephone call to a family member every 24 hours.

(4) Provision for a juvenile to receive personal telephone calls or messages from parents, legal guardians, foster parents, custodians or legal counsel.

**DOC 346.35 Visitation.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to visitation, including all of the following components:

(1) Family visits are of primary importance and shall be allowed on a daily basis. Each facility shall provide for family visits during designated hours. Visiting hours shall be designated during both the day and evening with a minimum of 3 hours before 5:00 p.m. and 2 hours after 5:00 p.m.

(2) Clergy, teachers, mental health professionals, social workers and legal counsel shall be permitted to visit at reasonable times. These visits may not be subject to any physical barriers and shall be free from audio monitoring.

(3) The superintendent may authorize persons in addition to those listed in subs. (1) and (2) to visit a juvenile.

(4) The number of visitors a juvenile may receive and the length of visits may be limited only as required by the facility’s schedule, space availability and personnel constraints or when there are documented reasons to justify such limitations. Family visiting time may not be scheduled for less than 30 minutes.

(5) Visitors shall be required to register upon entry into the facility.

(6) Establishment of a search policy of visitors and their possessions.

(7) A superintendent may permit contact visiting based on security needs and physical plant.

**DOC 346.36 Programming.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to programming for juveniles, including the following components:

(1) Juveniles shall be out of their cells a minimum of 12 hours per day, except for discipline, medical, behavioral, investigative or lockdown reasons.

(2) If a juvenile is not out of his or her cell for a minimum of 12 hours each day, facility staff shall document in writing the reasons for the increased cell time.

(3) On weekdays other than legal holidays, a minimum of 6 hours of the out-of-cell time under sub. (1) shall be time spent in structured group or individual activities, including education, exercise, recreation, and, as appropriate, family counseling or drug and alcohol counseling. On weekends and legal holidays, a minimum of 3 hours of the out-of-cell time under sub. (1) shall be time spent in structured activities which may include visitation, recreation, exercise and housekeeping.

**DOC 346.37 Education.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to educational programming for juveniles, including all of the following requirements:

(1) Superintendents shall ensure that juveniles have access to education, as provided by the school district in which the facility is located.

(2) Superintendents shall notify the school district in which the facility is located when juveniles are present in the facility.

(3) Superintendents shall cooperate with the school district in which the facility is located in the implementation of an educational program.

(4) Superintendents shall communicate to the department of public instruction significant concerns regarding adequacy of educational programming within facilities.

(5) Superintendents shall document on a daily basis all of the following:

(a) Number of hours of instruction by a teacher.

(b) Number of juveniles receiving instruction.

(c) Names of juveniles who refused to participate in education.

(d) Names of juveniles who were unable to participate and the reasons for the inability.

**DOC 346.38 Reading materials.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to access to reading materials, including the following components:
(1) Reading materials of general interest, such as books, newspapers and magazines, shall be provided.
(2) Reading materials which are prohibited for juveniles because their content creates a security risk shall be identified.
(3) Inspection of reading materials brought by visitors for juveniles if the facility allows visitors to bring in reading materials.
History: CR 89-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.39 Recreation and exercise.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to recreation and exercise for juveniles, including the following components:
(1) Juveniles shall have access to leisure time supplies and activities unless use of these materials is restricted for disciplinary or security reasons.
(2) Each juvenile shall be provided an opportunity to participate in at least one hour of large muscle or cardiovascular physical exercise per day.
(3) Superintendents shall document on a daily basis the names of juveniles who do not participate in recreation or exercise and the reason for nonparticipation.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.40 Religion.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to religious programming, including the following components:
(1) Juveniles shall have the right to religious ministration and sacraments as provided in s. 301.33, Stats.
(2) Juveniles shall be given an opportunity to request access to clergy. Facilities shall document requests and their disposition.
(3) Juveniles shall be notified of the schedule of religious services available in the facility and of religious organizations and clergy willing to conduct religious services in the facility.
(4) The superintendent shall provide to a juvenile a Bible, Quran, or other religious text upon request under s. 301.33, Stats.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.41 Uncompensated work assignments.** Juveniles are not required to participate in uncompensated work assignments unless the work is related to housekeeping, maintenance of the facility or grounds, personal hygiene needs, or part of an approved training or community service program.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.42 Volunteers.** If a facility uses volunteers, the operational plan under s. DOC 346.04 shall contain policies and procedures relating to the use of volunteers, including recruitment and selection, training and orientation, supervision and evaluation, duty and responsibility assignments, and termination.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.43 Canteen.** If a facility provides canteen, vending or other similar services for juveniles, the operational plan under s. DOC 346.04 shall contain policies and procedures for use of the service. If there is a canteen, regular accounting procedures shall be followed.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**Subchapter VII - Security**

**DOC 346.44 Observation of juveniles.** (1) All areas occupied by juveniles shall be physically observed at irregular intervals to ensure the custody, safety and welfare of the juveniles.
(2) At a minimum, officers shall physically observe each juvenile at irregular intervals according to the following schedule:
(a) Juveniles in behavioral segregation, discipline and control, suicide watch or other special needs status at least every fifteen minutes.
(b) Juveniles in receiving cells or holding rooms at least every fifteen minutes.
(c) Except as provided in par. (a) or (b), juveniles in general population or administrative segregation at least every thirty minutes.
(3) Each observation shall be documented.
(4) Closed circuit television is not a substitution for physical observations by officers.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.45 Searches.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to searches to ensure the safety and security of the facility, juveniles, staff, or public, including all of the following components:
(1) Search of facility premises.
(2) Search of the living quarters of juveniles, including their personal property.
(3) Searches of juveniles.
(4) Searches of visitors.
(5) Searches of professional staff.
(6) Searches of volunteers.
(7) Searches of staff.
(8) Strip searches may be conducted only in accordance with s. 968.255 (2) and (3), Stats.
(9) Searches may not be conducted as a disciplinary measure.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**DOC 346.46 Security practices.** (1) There shall be at least 3 complete sets of secure area and fire escape keys, one set in use, one set stored in a safe place which is accessible only to staff workers for use in an emergency and one set stored in a secure place outside the confinement area.
(2) There shall be an accurate record of the location of all keys.
(3) All staff workers shall be given instructions concerning the use and storage of the keys and shall be held strictly accountable for keys assigned to them.
(4) All staff workers shall be familiar with the locking system of the secure area and able to release juveniles promptly in the event of a fire or other emergency.
(5) The superintendent shall ensure that monthly inspections are made to determine if cell, dormitory and fire escape locks are in good working order. The inspections shall be documented.
(6) An approved security door with security glass observation openings shall be provided for locked entrances into all confinement rooms and areas.
(7) Any damage to the facility which compromises safety or security shall be promptly and securely repaired.
History: CR 99-039; cr. Register October 2010 No. 658, eff. 11-1-10.

**Subchapter VIII - Discipline**

**DOC 346.47 Discipline.** The operational plan under s. DOC 346.04 shall contain policies and procedures relating to discipline of juveniles, including all of the following components:
(1) At the time of admission, each juvenile shall be notified verbally and provided with a copy of the rules of behavior required in the facility and the potential disciplinary actions imposed for violation of the rules. Copies of the rules shall be posted in conspicuous places.
(2) Documentation of a rule infraction and any disciplinary action shall be made part of the juvenile's record as required under s. DOC 346.06.
(3) Disciplinary action shall be determined on an individual basis. Group discipline for the misbehavior of one juvenile is prohibited.
DOC 346.48 Disciplinary hearings. The operational plan under s. DOC 346.04 shall contain policies and procedures relating to disciplinary hearings, including all of the following components:

1. Whenever cell confinement of 6 hours or more is proposed as a disciplinary measure, the juvenile shall be given a disciplinary hearing. Notice of the hearing and specific charges shall be given at least 12 hours prior to the hearing unless the notice is waived by the juvenile. The juvenile shall be advised of the following rights:
   a. The right to request the presence of available material witnesses.
   b. The right to have the facility provide a staff advocate or adequate substitute to assist the juvenile in responding to the charges.
   c. The right to have an impartial hearing officer or committee within 24 hours of receipt of the written notice by the juvenile.

2. At the hearing, the juvenile or the juvenile’s representative shall be entitled to call witnesses and present documentary evidence which are material to the determination of the facts of the alleged violation.

3. No later than 24 hours after the hearing, the hearing officer shall issue a written decision and instructions for possible appeal to the superintendent.

4. A juvenile may waive the right to a disciplinary hearing in writing at any time. A waiver does not constitute an admission of the alleged violation.

5. A juvenile may appeal the decision of the hearing officer to the superintendent within 24 hours of receipt of the decision.

6. The superintendent shall issue a written decision no later than 24 hours after receipt of an appeal under sub. (6).

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.49 Control. The operational plan under s. DOC 346.04 shall contain policies and procedures for the control of juveniles, including all of the following components:

1. CELL confinement. If a juvenile’s behavior presents a serious risk of harm to self or others or if a juvenile presents a serious risk to security, the juvenile may be confined to his or her own cell for purposes of control and shall be referred to health care professionals as soon as possible if appropriate. The juvenile shall be released as soon as the danger has ended. Cell confinement for control for more than one hour shall require the approval of the superintendent or designee. If the juvenile is held in cell confinement for more than one hour, the superintendent or designee shall personally visit the confined juvenile before the juvenile has been confined for 6 hours, excluding hours between 8:00 p.m. to 7:00 a.m., and at least once every 6 hours thereafter until the juvenile is released from cell confinement. Documentation of cell confinement and required approvals shall be made a part of the juvenile’s record.

2. A juvenile may be confined to his or her own cell for discipline or control only as follows:
   a. There may be no additional loss of privileges, and reading, recreational and educational materials shall be provided unless there is reason to believe that these materials will be damaged or their presence presents a danger to the juvenile.
   b. No juvenile may be placed in cell confinement for more than 24 consecutive hours without medical authorization based on a finding that further confinement will not harm the juvenile.
   c. A written or electronic log of cell confinements shall be recorded and maintained.
   d. A juvenile may not be placed in confinement in a cell designed for the administrative or disciplinary segregation of adults.

History: CR 09-039; cr. Register October 2010 No. 658, eff. 11-1-10.

Subchapter IX — Juvenile Portion of a County Jail

DOC 346.50 Admission criteria for juvenile portions of county jails. Juveniles may be admitted to a juvenile portion of a county jail under s. 48.209 or 938.209, Stats., only subject to the following:

1. Juveniles may be held in a juvenile portion of a county jail for a maximum of 24 hours, not including weekends or holidays, except juveniles may be held for a maximum of 6 hours, excluding weekends or holidays in counties that are within a metropolitan statistical area under the current designation of the federal Bureau of Census.

2. Juveniles may be held only for the purposes of identification, processing, and to arrange for release to parents or transfer to juvenile court officials or juvenile shelter or detention facilities. Any holding of juveniles shall be limited to the absolute minimum time necessary to complete these purposes, not to exceed the time
limits under sub. (1). An alleged or adjudicated delinquent may be detained before a court appearance for a period of time not to exceed the limits under sub. (1). An alleged or adjudicated delinquent may be detained after a court appearance for a time period not to exceed an additional 6 hours. Any hold of an adjudicated delinquent that is not related to a court appearance is prohibited.

(3) Persons who are 18 years of age or older may not be admitted or held in a juvenile portion of a county jail, unless they are currently only under juvenile court jurisdiction under ch. 938 or 48, Stats.

History: CR 09-639; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.51 Juvenile justice and delinquency prevention act. A juvenile portion of a county jail may be used to hold juveniles only as permitted by 42 USC 5601 to 5761 and 28 CFR Part 31.

History: CR 09-639; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.52 Contact. (1) There may be no physical or visual contact between juveniles and adult inmates in the juvenile portion of a county jail.

(2) There may be no sustained sound contact between juveniles and adult inmates in the juvenile portion of a county jail.

History: CR 09-639; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.53 Existing facilities. Existing juvenile portions of a county jail shall continue to meet the physical requirements for adult jails established in ch. DOC 350.

History: CR 09-639; cr. Register October 2010 No. 658, eff. 11-1-10.

DOC 346.54 Staffing plan in a juvenile portion of a county jail. (1) No officer providing supervision to juveniles may be responsible for the supervision of more than 30 individuals.

(2) No officer responsible for supervision of juveniles may during the same time period have responsibility for radio or dispatch duties.

(3) An officer of the same gender as the juveniles being admitted or held in custody shall be on duty in the facility.

(4) At all times an officer shall be within hearing distance of the area in which a juvenile is confined.

History: CR 09-639; cr. Register October 2010 No. 658, eff. 11-1-10.
Chapter DOC 349

MUNICIPAL LOCKUP FACILITIES

**DOC 349.01 Purpose and authority.** (1) The purpose of this chapter is to establish minimum standards for the design, construction and security of municipal lockup facilities, for maintaining sanitary and safe conditions in lockups and for the development of written program standards for municipal lockup facilities relating to holding inmates and juveniles who are alleged to have committed a delinquent act.

(2) The purpose of this chapter as it applies to juveniles is to protect the health, safety and welfare of juveniles held in municipal lockup facilities, and to ensure compliance with 42 USC 5601 to 5761 and 28 CFR Part 31.

(3) This chapter is promulgated under the authority of ss. 227.11 (2) (a), 301.03 (5), 301.36, 302.365, and 938.209 (2m), Stats.

**History:** Cr. Register, January, 1990, No. 409, eff. 2−1−90; am. Register, December, 1992, No. 444, eff. 1−1−93; cr. Register, June, 1999, No. 522, eff. 7−1−99.

**DOC 349.02 Applicability.** This chapter applies to all lockup facilities operated by municipalities under ss. 302.30, 61.24, and 62.09 (13), Stats.

**History:** Cr. Register, January, 1990, No. 409, eff. 2−1−90.

**DOC 349.03 Definitions.** In this chapter:

(1) “Administer” has the meaning given in s. 450.01 (1), Stats.

(1m) “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.

(2) “Confinement” means placement in a cell or holding room for one person confined in a lockup facility.

(3) “Confined” means in his or her possession.

(4) “Contraband” means any item not allowed in a lockup by the lockup administrator.

(4m) “Delinquent act” means an act which is committed by a juvenile who is 10 years of age or older and which is a violation of any state or federal criminal law, except as provided in ss. 938.17, 938.18, and 938.183, Stats., or which constitutes a contempt of court, as defined in s. 785.01 (1), Stats., as specified in s. 938.355 (6g), Stats.

(5) “Deliver” or “delivery” has the meaning given in s. 450.01 (5), Stats.

(6) “Department” means the Wisconsin department of corrections.

(7) “Detention strength” means strong enough to resist damage an inmate could inflict with tools or equipment that would normally be in his or her possession.

(8) “Division” means the division of probation and parole.

(9) “Health screening form” means the form or forms developed by a lockup facility to obtain at admission information relating to each inmate’s medical and dental condition, medical illnesses or disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk.

(10) “Holding room” means a secure room in the lockup designed for holding, after arrest, one or more inmates of the same sex and security classification and segregated according to the requirements specified in s. 302.36, Stats., for purposes of processing admissions and releases.

(10m) “Juvenile” 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 any state or federal criminal law or any civil law or municipal ordinance, “juvenile” does not include a person who has attained 17 years of age.

(11) “Lockup administrator” means the person in charge of lockup operations or a designee.

(12) “Lockup facility” or “lockup” means a temporary place of detention within a police station which is used exclusively for confinement of persons under arrest before those persons are brought before a court or post bond.

(13) “Privileged mail” means any written materials between an inmate and an attorney, court, government or facility official.

(14) “Secretary” means the secretary of the department.

(14m) “Secure custody status” means the status of a juvenile in a lockup facility, which begins when the juvenile is placed in a cell, holding room, or other locked or secure room within the lockup and which ends when the juvenile is released from custody or is removed from the secure portion of a police station.

(15) “Secure detention area of the lockup” means the area within the secure outer boundaries of a lockup.

(16) “Security classification” means a grouping of inmates based on the level of supervision required, the nature of the offense or offenses for which the inmates were arrested and any other criteria set by the lockup administrator.

(17) “Special needs inmate” means an inmate who is identified or suspected of having a medical illness or disability, mental illness, a developmental disability or alcohol or other drug abuse problem or who is a suicide risk.

**History:** Cr. Register, January, 1990, No. 409, eff. 2−1−90; renum. (1) to (11) to be (2) to (4), (6) to (8), (10) to (12), (15) and (16) and am. (8), cr. (1), (5), (9), (13), (14) and (17), Register, December, 1992, No. 444, eff. 1−1−93; emerg. cr. (1m), (4m) and (10m), (14m), Register, June, 1999, No. 522, eff. 7−1−99.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.
DOC 349.04 Prohibited uses. Pursuant to s. 302.30, Stats., a lockup may not be used to hold persons pending trial who have appeared in court or persons who have been committed to imprisonment for nonpayment of fines or forfeitures.

History: Cr. Register, January, 1990, No. 409, eff. 2-1-90; emerg. renum. (1) and (2), eff. 12-19-98; renum. (1) to be unm. and renum. (2) to be DOC 349.21 (1), Register, June, 1999, No. 522, eff. 7-1-99.

DOC 349.05 Construction plans. (1) Before design development begins, a village or city which intends to build or remodel a lockup shall file a letter of intent with the division’s regional detention facilities specialist.

(2) Copies of original and updated design drawings of the area for the lockup shall be submitted to the division’s regional detention facilities specialist at the same time the drawings are submitted to the village or city.

(3) All sites, plans and specifications for construction or remodeling of a lockup shall comply with the state commercial building code, chs. Comm 61 to 65.

(4) Prior to approval by the department of commerce under chs. Comm 61 to 65 and prior to publication of bid documents, 2 complete sets of plans and specifications shall be forwarded to the division for its review and approval.

(5) Upon approval by the division, one set of plans and specifications shall be marked to indicate approval by the division and returned to the office that submitted the plan. The remaining set shall be filed in the division. If the plans and specifications are not approved, both sets shall be returned to the sender.

History: Cr. Register, January, 1990, No. 409, eff. 2-1-90; corrections in (3) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522, eff. 7-1-99.

DOC 349.06 Physical environment for new or substantially remodeled lockups. (1) APPLICABILITY. This section applies only to lockups that are constructed or substantially remodeled on or after February 1, 1990.

(2) EQUIPMENT AND MATERIALS. The following equipment and materials in a lockup shall be of detention strength and manufactured, sold and installed by firms that specialize in jail and prison equipment or ordered from a firm that will follow the specifications for detention strength equipment in this chapter:

(a) Windows;
(b) Glazing;
(c) Security screens;
(d) Grills over vents and windows;
(e) Security doors;
(f) Security locks;
(g) Keys;
(h) Hinges;
(i) Food passes;
(j) Observation ports;
(k) “Contraband proof” sills;
(L) Speaking ports;
(m) Seats;
(n) Benches;
(o) Lights;
(p) Locking mechanism housings;
(q) Key cabinets;
(r) Walls;
(s) Windows and door frames;
(t) Bunks;
(u) Tables;
(v) Toilets;
(w) Urinals;
(x) Wash basins;
(y) Drinking fountains;
(z) Showers;
(za) Desks;
(zb) Clothing hooks;
(zc) Shelves;
(zd) Door pulls;
(ze) Screws;
(zf) Bolts;
(zg) Mirrors;
(zh) Floor drains; and
(zl) Ceilings.

(3) CELLS. (a) This subsection applies to all cells except holding rooms. Requirements for holding rooms are specified under sub. (4).

(b) Each cell shall be designed and used for single occupancy only.

(c) Each cell shall have a floor area of at least 54 square feet.

(4) HOLDING ROOMS. (a) A person under arrest who is in the process of being admitted or released may be placed in a holding room for a period of time not to exceed 4 hours, but only after the decision has been made, in the case of a person being admitted, to admit the person to the lockup facility and a proper entry has been made in the register of inmates required under s. DOC 349.11 (1).

Holding rooms shall be located in an area that allows continuous staff observation or electronic surveillance of inmates. Supervision shall be in accordance with the requirements of ss. 302.41 and 302.42, Stats.

(b) Holding rooms may be designed and used for multiple occupancy for inmates of the same security classification who are properly segregated as required under s. 302.36, Stats.

(c) Each lockup which has a holding room shall have at least one cell that is designed and used for single occupancy.

(d) Each holding room shall contain detention strength, rigidly constructed seats or benches bracketed to the wall or bolted to the floor or seats or benches of masonry construction of a similar strength.

(e) A detention strength, institution-type wash basin and toilet shall be provided for every 8 occupants and, for holding rooms designed for male occupancy, a urinal shall be provided.

(f) Hot and cold running water shall be provided.

(g) A holding room shall have a floor area of at least 50 square feet. The maximum capacity for a holding room with at least 50 square feet of floor space but less than 60 square feet of floor space shall be 5 persons. The maximum capacity for a larger holding room shall be one more person for every additional 10 square feet of floor space.

(5) EXTERIOR WINDOWS. (a) This subsection applies only to lockup facilities that have exterior windows. In this subsection, “exterior window” means any window that faces the exterior of the lockup facility or an area outside the secure detention area of the lockup facility.
(b) All exterior windows shall be translucent or shall be located to prevent persons outside the secure detention area of the lockup facility from observing inmates within the lockup.

(c) Each exterior window that has an opening in any direction in excess of 5½ inches shall be covered with security steel grills to prevent escape.

(d) If an exterior window is accessible to inmates and opens, the window shall be mounted in a detention strength frame and shall be covered on the inside with a security screen of at least 1600 pounds per lineal inch tensile strength and made of at least .047 mil. diameter wire to prevent the passage of contraband.

(e) If an exterior window is not accessible to inmates and opens, the window’s security screen need not meet the requirements of par. (d), but the screen shall have a tensile strength of at least 500 pounds per lineal inch and shall be made of wire of at least .028 mil. diameter.

(f) If an exterior window does not open, whether or not it is accessible to inmates, the security screen required under par. (d) or (e) may be omitted if the window is mounted in a detention strength frame and the pane is security glass of sufficient strength to resist breakage and prevent the passage of contraband.

(6) EXTERIOR APPROACHES. The exterior of the lockup and approaches to the lockup shall be well lighted at night to permit observation of persons approaching the building.

(7) WALLS. (a) Walls on the exterior of the lockup shall be constructed of reinforced concrete or fully grouted concrete block at least 8 inches thick, or the walls shall be constructed of materials of similar strength which provide equivalent security.

(b) Walls in the interior of the lockup shall be constructed of reinforced concrete or fully grouted concrete block at least 6 inches thick, or the walls shall be constructed of materials of similar strength which provide equivalent security.

(8) CEILINGS. Ceilings in areas accessible to inmates shall be constructed of pre-cast concrete or flat steel of at least 3/16 inch thickness, or ceilings shall be constructed of materials of similar strength which provide equivalent security.

(9) DOORS AND LOCKS. (a) Every door that leads to the exterior of the lockup facility or to an area outside the secure detention area of the lockup shall have a sill designed to prevent the introduction of contraband.

(b) Every door entering into the secure detention area of the lockup shall be of detention strength. Each of these doors shall have a vision panel or other means of observation to permit identification of individuals before they enter the secure detention area of the lockup and to allow observation of the area before entering it. If the vision panel has an opening in any direction in excess of 5½ inches, the opening shall be covered with detention strength steel grills to prevent escape.

(c) If locks to cell or holding room doors have an electric release, the electric release shall have a mechanical emergency release. The mechanical emergency release may be by key at the cell door provided that the inmate does not have access to the key hole mechanism.

(10) ACCESS TO CONTROLS. Inmates may not have access to plumbing, wiring, vents, thermostats, switches or controls.

DOC 349.07 Physical environment of existing lockups. (1) This section applies to lockups that were constructed before February 1, 1990 and have not been substantially remodeled on or after February 1, 1990.

(2) Each cell shall be designed and used for single occupancy only.

(3) Each cell shall be at least 5½ feet wide and 7½ feet long and provide 400 cubic feet of air space.

(4) Each cell shall contain a rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of similar strength, a prison-type wash bowl a prison-type toilet. The supply of water shall be adequate.

(5) All windows accessible to prisoners shall be covered with a heavy gauge screen of 1⁄4 mesh or less or a detention screen to prevent passage of contraband.

(6) An approved security door with a security glass observation opening shall be provided for each entrance into the secure detention area of a lockup facility. The door may not be unlocked except to admit authorized persons and inmates.

(7) A modern detention strength locking device shall be installed on each security door.

(8) The exterior of and approaches to the lockup shall be well lighted at night to permit observation of persons approaching the building.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; emerg. and r. and recr. eff. 3−19−90; t. and recr. November, 1990, No. 419, eff. 12−1−90.

DOC 349.08 Sanitation and hygiene. (1) Except when an inmate’s safety would be jeopardized and the inmate has been identified as having a special problem under s. DOC 349.12, the lockup administrator shall provide:

(a) Clean cloth towels or paper towels and soap to each inmate upon request;

(b) Upon request, toilet articles sufficient for the maintenance of inmate cleanliness and hygiene, including toothpaste, a toothbrush, a comb, toilet paper and basic feminine hygiene materials.

There shall be no common use of towels, toothbrushes, combs, shaving materials or feminine hygiene materials.

(c) Adequate and appropriate clothing and footwear for an inmate whose clothing has been confiscated, for use while the inmate is in custody;

(d) Clean blankets to each inmate upon request during normal sleeping hours. Blankets shall be laundered or sterilized before reissue; and

(e) When an inmate is detained overnight, a mattress at least 3 inches thick and of proper size to fit the bed. Each mattress and each pillow shall be covered with fire retardant, waterproof, easy-to-sanitize material. Mattresses and pillows shall be kept in good repair and in a clean and sanitary condition. Suppliers of mattresses and pillows shall provide evidence to the lockup administrator that the products are fire retardant, waterproof and easy to clean.

(2) Each cell shall be cleaned and the toilet area sanitized after an occupant is released. Each holding room shall be cleaned and the toilet area sanitized at least twice a week.

(3) If the facility where the lockup is located has a kitchen where food is prepared for inmates, the kitchen shall meet the requirements for food service and dishwashing provided in ss. DHS 190.09 and 190.10.

(4) All food served to inmates shall be clean, free from spoilage, free from adulteration and misbranding and safe for human consumption.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; emerg. am. (1), eff. 3−19−90; am. (1) (intro ) and (b), Register, November, 1990, No. 419, eff. 12−1−90; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register December 2006 No. 612; corrections in (3) made under s. 13.92 (4) (b) 7., Stats.

DOC 349.09 Health care. (1) The lockup administrator shall provide or secure necessary medical treatment for persons in custody, including treatment for inmates who appear to be seriously ill or injured, inmates who exhibit significant mental or emotional distress and inmates who appear to be so significantly under the influence of a controlled substance or alcohol as to have impaired functioning.

(2) The lockup administrator shall provide or secure emergency dental care for inmates.

(3) No prescription medication or treatment may be administered to an inmate unless prescribed by a physician. If a nurse or
physician is not available, lockup staff may deliver prescribed doses of oral medication at prescribed times.

(4) Any medications kept at the lockup shall be stored in a secure area that is not accessible to inmates.

(5) If an inmate dies or becomes acutely ill while in custody, the next of kin shall be notified as soon as possible.

(6) An itemized list shall be kept for 90 days of all food and beverages served during normal meal times.

(7) Medical records shall be kept separate from other records and shall be maintained in a confidential manner in accordance with s. 146.81 to 146.83, Stats., and any other applicable state or federal laws.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; r. and recr. eff. 1−1−93.

DOC 349.10 Fire safety. (1) Each lockup shall have and shall properly maintain fire alarms, smoke and thermal detectors, fire extinguishers, fire attack equipment and self−contained breathing apparatuses which operate for at least 30 minutes. This equipment shall be placed in the lockup facility in accordance with the advice of the local fire department.

(2) Each lockup shall develop written policies on fire protection, evacuation, including evacuation of persons with disabilities and training of staff in equipment use and evacuation. These policies shall comply with local fire department recommendations.

(3) The evacuation route developed as part of the evacuation policy under sub. (2) shall be posted in a conspicuous place for lockup staff within the lockup facility.

(4) The lockup administrator shall arrange for a fire inspection by the local fire department at least once every 6 months. Documentation of fire inspections shall be included in facility files.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90.

DOC 349.11 Records and reporting. (1) REGISTER OF INMATES. Each lockup shall keep a register of all inmates. The register shall contain identifying information on each inmate that includes name, residence, age, sex, date of birth, race, time and date of confinement, cause and authority for the confinement, time and date of release, and the releasing authority. If an inmate escapes from confinement, the date, time and manner of the escape shall be recorded in the register.

(2) LOCKUP LOG. Each lockup shall have a log which shall include the information required in s. DOC 349.12 (1) and (5). The log shall be maintained by shift on a daily basis.

(3) STORAGE OF RECORDS. Records shall be kept in a secure area.

(4) REPORTING REQUIREMENTS. (a) The lockup administrator shall notify the division’s regional detention facilities specialist within 48 hours after any of the following events occur:

1. An inmate dies;

2. An inmate attempts suicide and is admitted to a hospital, not including an emergency room admission or admission for detention and evaluation under ch. 51, Stats., or is provided medical treatment for a life−threatening injury incurred as a result of the suicide attempt;

3. An inmate has received an injury and is hospitalized due to the injury;

4. An inmate escapes or attempts to escape from confinement;

or

5. There is any significant damage to the lockup affecting the safety or security of the lockup.

(b) Information requested by the division shall be promptly furnished by the lockup administrator.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; emerg. r. and recr. eff. 3−1−90; r. and recr. eff. 1−1−93; r. and recr. eff. 12−1−90.

DOC 349.12 Security. (1) Lockup staff shall physically inspect all areas of the lockup occupied by inmates at irregular intervals but at least once every 60 minutes during the day and night, to ensure that inmates are in custody and are safe, except that areas occupied by inmates who have been identified by lockup staff as having a special problem, such as mental disturbance, a suicidal tendency or severe alcohol or drug withdrawal, shall be physically inspected at least once every 15 minutes. Lockup staff shall record each inspection in the lockup log, including the time of the inspection and the inspecting staff member’s initials.

(2) There shall be at least 3 complete sets of lockup and fire escape keys, one set in use, one set stored in a secure place within the secure detention area which is accessible only to lockup personnel for use in an emergency and one set stored in a secure place outside the secure detention area.

(3) All lockup personnel shall be given instructions concerning the use and storage of lockup and fire escape keys and shall be held strictly accountable for keys assigned to them.

(4) All lockup personnel shall be familiar with the lockup system of the lockup facility and shall be able to release inmates promptly in the event of a fire or other emergency.

(5) The lockup administrator shall ensure that lockup staff make monthly inspections to determine if cell and fire escape locks and doors are in good working order. Each inspection shall be recorded in the lockup log.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90.

DOC 349.13 Use of force. Corporal punishment of inmates is forbidden.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; emerg. r. and recr. eff. 3−1−90; r. and recr. eff. 12−1−90.

DOC 349.14 Discipline. Lockup staff may not give an inmate disciplinary authority over another inmate.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90.

DOC 349.15 Exceptions. (1) The division administrator or designee may grant a variance to a requirement found in this chapter, except that no variance may be granted for the requirement of single occupancy cells under s. DOC 349.06 (3) (b) or 349.07 (2), for the minimum cell space requirement under s. DOC 349.06 (3) (c) or 349.07 (3) or for any requirement specifically imposed by Wisconsin Statutes.

(2) In order to obtain a variance, the lockup administrator shall demonstrate in writing to the division’s regional detention facilities specialist that strict enforcement of the rule would result in unreasonable hardship for administration of the lockup and that the variance would provide equivalent or better protection for the health, safety, welfare and rights of inmates and the public.

(3) The department may impose specific conditions, including time limits on a variance, in order to protect the health, safety, rights or welfare of inmates or the public.

(4) Violation of any condition under which a variance is granted constitutes a violation of this chapter. Upon finding that there has been a violation of a condition of a variance, the department may revoke the variance and strictly enforce the rule.

History: Cr. Register, January, 1990, No. 409, eff. 2−1−90; emerg. r. and recr. eff. 3−19−90; r. and recr. eff. 1−1−93; r. and recr. eff. 1−1−93.

DOC 349.16 Policy and procedure manual. (1) CONTENT OF MANUAL. The lockup administrator shall develop a written policy and procedure manual for the operation of each lockup facility. The policies and procedures contained in the manual shall be developed in consultation with outside resources, such as medical, mental health, alcohol and other drug abuse, and developmental disabilities providers, and shall reference any agreements with such providers for the provision of services to inmates identified as needing care and treatment. The manual shall contain the following components:

(a) Statement of the availability of the manual to staff.
(b) Statement of the policies of the lockup facility on inmate programs, including inmate health screening and care, suicide prevention, control and administration of medications, and communicable disease control.

(c) Statement of policies and procedures for detention of juveniles who are alleged to have committed a delinquent act, consistent with s. DOC 349.21.

(d) Statement of the procedure for notification of inmates and juveniles of each policy under pars. (b) and (c).

(2) Submission and approval of manual. (a) Division approval. The manual shall be submitted to the division for approval by April 1, 1993.

1. The division shall approve or disapprove the manual in writing within 60 days after submission. If the division approves the manual, the division shall notify the lockup administrator in writing of the approval.

2. If the division disapproves the manual, the division shall notify the lockup administrator in writing of the decision and the reasons for the disapproval. If the lockup administrator accepts the decision, the lockup administrator shall submit a revised manual which conforms with the decision within 21 days of the date of the disapproval. If the lockup administrator does not accept the decision of the division, then the lockup administrator may appeal under par. (b).

(b) Appeal to secretary. Within 21 days of the date of the disapproval, the lockup administrator may appeal the division’s disapproval to the secretary. The secretary shall issue a decision within 30 days of the appeal. The decision shall be in writing and shall state the reasons for the decision. If required by the secretary’s decision, the lockup administrator shall modify the manual and re-submit it within 60 days of the decision to the division.

(c) Changes to manual. Any proposed substantive changes to an approved manual shall be submitted to the division and shall be reviewed under the procedures of this section.

History: Cr. Register, December, 1992, No. 444, eff. 1−1−93;
emerg. remum. (1) (c) to be (1) (d) and am., cr. (1) (c), eff. 12−10−98; remum. (1) (c) to be (1) (d) and am., cr. (1) (c). Register, June, 1999, No. 522, eff. 7−1−99.

DOC 349.17 Inmate health screening and care. The manual under s. DOC 349.16 shall contain policies and procedures for inmate health screening and care, including the following components:

(1) Health screening form which is developed in conjunction with health care professionals and which is used at booking to obtain information relating to each inmate’s medical and dental condition, medical illnesses or disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk.

(2) Procedures for the documentation of health screening results, referrals made or health care provided and maintenance of documents in an inmate’s confidential medical file.

(3) Names, addresses and telephone numbers of health care providers or agencies who have agreed to provide emergency and other health care services for special needs inmates.

(4) Procedures for the referral of an inmate to lockup facility health care staff or to other agencies which provide health care.

(5) Designation of staff who have the authority to make health care decisions, including emergency medical and dental care.

(6) Documentation in an inmate’s confidential medical file of any referral and identification of the services provided, including emergency services.

(7) Maintenance of agreements between the lockup facility and providers of health care services.

History: Cr. Register, December, 1992, No. 444, eff. 1−1−93.

DOC 349.18 Suicide prevention. The manual under s. DOC 349.16 shall contain policies and procedures relating to the supervision and housing of inmates who may be at risk of seriously injuring themselves, including the following components:

(1) Assessment of an inmate’s suicide risk at booking and documentation of the results.

(2) Designation of persons who may assess an inmate’s level of suicide risk and who may authorize placement on and removal from a suicide watch status for inmates who are suicide risks.

(3) Identification of housing areas for inmates who are suicide risks.

(4) Referral of inmates who are suicide risks to mental health care providers or facilities.

(5) Supervision of inmates who are suicide risks, including frequency of observation and documentation of supervision.

(6) Communication between health care and lockup facility personnel regarding the status of an inmate who is a suicide risk.

(7) Intervention of a suicide in progress, including first aid measures.

(8) List of persons to be notified in case of potential, attempted or completed suicides.

(9) Documentation of actions and decisions regarding inmates who are suicide risks.

History: Cr. Register, December, 1992, No. 444, eff. 1−1−93.

DOC 349.19 Control and administration of medications. The manual under s. DOC 349.16 shall contain policies and procedures relating to the control and administration of prescription and nonprescription medications, including the following components:

(1) Determination by appropriate personnel that all medications brought in by inmates or other persons for an inmate are necessary.

(2) Inventory and secured storage of all medications brought into the lockup facility.

(3) Designation of staff who are authorized to administer or who are authorized to deliver medication to inmates.

(4) Administration or delivery of prescription and nonprescription medications to inmates.

(5) Documentation of all medication administered or delivered to an inmate, including who prescribed the medication, who administered or delivered the medications and the date and time of administration or delivery. All refusals of recommended or prescribed medications by an inmate must be documented.

(6) Return of an inmate’s medications inventoried at admission.

(7) Inventory or disposal of unused medications upon the inmate’s release or transfer.

History: Cr. Register, December, 1992, No. 444, eff. 1−1−93.

DOC 349.20 Communicable disease control. The manual under s. DOC 349.16 shall contain policies and procedures relating to the care, treatment and supervision of inmates who may have communicable diseases, including the following components:

(1) Provision of treatment and supervision of inmates during isolation or quarantine under s. 252.06 (6) (b), Stats.

(2) Documentation of the need for isolation or quarantine under s. 252.06 (6) (b), Stats., in the inmate’s confidential medical file.

History: Cr. Register, December, 1992, No. 444, eff. 1−1−93; correction in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register December 2006 No. 612.

DOC 349.21 Detention of juveniles. (1) A lockup may not be used for the secure detention of juveniles, except a lockup may be used to hold juveniles who are alleged to have committed a delinquent act.

(2) A lockup administrator may authorize the holding of a juvenile who is alleged to have committed a delinquent act only if all of the following criteria are met:
(a) Except as provided in this section, the lockup facility meets the provisions of this chapter and has been approved by the department as a suitable place for holding juveniles in custody.

(b) The lockup administrator shall have developed and implemented policies and procedures which ensure sight and sound separation between juveniles and adult inmates in all areas of the lockup facility, including entrances, booking, intake, elevators, staircases, cells, holding rooms, and all other areas in which juveniles could have contact with adult inmates.

(c) The lockup administrator shall have established and implemented policies and procedures to ensure that juvenile records are maintained in a confidential manner and kept separate from adult inmate records in accordance with s. 938.396, Stats.

(3) The lockup administrator may only authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for a period of time not to exceed 6 hours.

(4) The lockup administrator may only authorize that a juvenile who is alleged to have committed a delinquent act be placed in secure custody status for investigative purposes.

(5) Lockup facility staff shall physically observe each juvenile and document each observation. The observations shall be at irregular intervals in accordance with the following schedule:

(a) Every juvenile at least once every 20 minutes.

(b) Every juvenile exhibiting behavioral or mental problems, such as mental disturbance, suicidal tendency, or being under the influence of alcohol or drugs, at least once every 15 minutes.

History: Emerg. cr. eff. 12-10-98; cr. Register, June, 1999, No. 522, eff. 7-1-99.
Chapter DOC 350

**JAILS**

**DOC 350.01 Purpose and authority.** The purpose of

**DOC 350.02 Applicability.** This chapter applies to all jails established by counties under s. 302.30, Stats., all state--local shared correctional facilities established under s. 302.45, Stats., and all county houses of corrections established under s. 303.16, Stats. **History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90.

**DOC 350.03 Definitions.** In this chapter:

(1) “Administer” has the meaning given in s. 450.01 (1), Stats.

(2) “Cell” means a secure room designed and used as a sleeping room for one person confined in a jail, except that when the jail meets the conditions for double celling under s. DOC 350.07, “cell” means a secure room designed as a sleeping room and used for sleeping one or 2 persons confined in a jail.

(3) “Confinement” means placement in a cell of a person who has been arrested and is awaiting bail or bond posting, arraignment or another legal proceeding listed under ss. 938.208 and 938.209, Stats., or s. 302.31, Stats.

(4) “Contraband” means any item not allowed in a jail by the sheriff or by this chapter.

(5) “Dayroom” means an area in a jail which is designed and used as a leisure time area and which is readily accessible to a group of cells or a dormitory or is located within a dormitory.

(6) “Deliver” or “delivery” has the meaning given in s. 450.01 (5), Stats.

(7) “Department” means the Wisconsin department of corrections.

(8) “Detention strength” means strong enough to resist damage an inmate could inflict with tools or equipment that would normally be in his or her possession.

(9) “Division” means the division of probation and parole.

(10) “Dormitory” means a room used for sleeping purposes and designed for occupancy by 2 or more persons.

(11) “Health screening form” means the form or forms developed by a jail to obtain at admission information relating to each inmate’s medical and dental condition, medical illnesses or disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk.

(12) “Holding room” means a secure room in the jail designed for holding more than one inmate of the same sex and security classification as determined by the segregation requirements specified in s. 302.36, Stats., for the purposes of processing admissions and releases.

(13) “Huber law inmate” means an inmate granted the privilege of leaving a jail under s. 303.08, Stats., or s. 973.09, Stats.

(14) “Jail” means a place of confinement operated by a sheriff for the purposes listed under s. 302.31, Stats. “Jail” includes a jail as defined under s. 302.30, Stats., a state--local shared correctional facility as defined under s. 302.45, Stats., and a county house of corrections as defined under ss. 303.16 and 303.17, Stats.

(15) “Multi−purpose room” means a room or an area in a jail that is designated for recreational activities, physical exercise or congregate assembly other than visiting.

(16) “Privileged mail” means any written materials between an inmate and an attorney, court, government or jail official.

(17) “Receiving cell” means a secure room designed and used as a sleeping room for one person confined in a jail to segregate the person for admission, release or disciplinary purposes.

(18) “Secretary” means the secretary of the department.

(19) “Secure perimeter of the jail” means the secure outer boundaries of a jail.

(20) “Security classification” means a grouping of inmates based on the level of supervision required, the nature of the offense for which the inmate was arrested or of which the inmate was convicted, or other criteria set by the sheriff.

(21) “Sheriff” means the person in charge of jail operations or a designee.

(22) “Special needs inmate” means any inmate who is identified or suspected of having a medical illness or disability, mental illness, a developmental disability or alcohol or other drug abuse problem or who is a suicide risk.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90. r. and recr. Register, November, 1990, No. 419, eff. 12–1–90; cr. (1) to (16) to be (2) to (5), (7) to (10), (12) to (15), (17) to (21) and am. (9), cr. (1), (6), (11), (16), (18) and (22), Register, December, 1992, No. 444, eff. 1–1–93; corrections in (5) made under 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522.

**DOC 350.04 Construction plans.** Before the design development begins, a county which intends to build or remodel a jail shall file a letter of intent with the division’s regional detention facilities specialist.
(2) Copies of original and updated drawings of the area within the secure perimeter of the jail shall be submitted to the division's regional detention facilities specialist at the same time the drawings are submitted to the county.

(3) All sites, plans and specifications for construction or remodeling of a jail shall comply with the state commercial building code, chs. Comm 61 to 65.

(4) Prior to approval by the department of commerce under chs. Comm 61 to 65 and prior to publication of bid documents, 2 complete sets of plans and specifications shall be forwarded to the division for its review and approval.

(5) Upon approval by the division, one set of plans and specifications shall be marked to indicate approval by the division and returned to the county office or other office that submitted the plans. The remaining set shall be filed in the division. If the plans and specifications are not approved, both sets shall be returned to the sender.

History: Cr. Register, February, 1990, No. 410, eff. 3–1–90; corrections in (3) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522; corrections in (3) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register December 2006 No. 612.

DOC 350.05 Physical environment for new or substantially remodeled jails. (1) APPLICABILITY. This section applies only to jails that are constructed or substantially remodeled on or after March 1, 1990.

(2) EQUIPMENT AND MATERIALS. The following equipment and materials used in a jail shall be of detention strength and manufactured, sold and installed by firms that specialize in jail and prison equipment or ordered from a firm that will follow the specifications of detention strength equipment in this chapter:

(a) Windows;
(b) Glazing;
(c) Security screens;
(d) Grills over vents and windows;
(e) Security doors;
(f) Security locks;
(g) Hinges;
(h) Food passes;
(i) Observation ports;
(j) “Contraband proof” sills;
(k) Speaking ports;
(L) Seats;
(m) Benches;
(n) Lights;
(o) Locking mechanism housings;
(p) Key cabinets;
(q) Walls;
(r) Window and door frames;
(s) Bunks;
(t) Tables;
(u) Toilets;
(v) Urinals;
(w) Wash basins;
(x) Drinking fountains;
(y) Showers;
(z) Desks;
(za) Clothing hooks;
(zb) Shelves;
(zc) Door pulls;
(zd) Screws;
(ze) Bolts;
(zf) Mirrors;
(zg) Floor drains; and

(zh) Ceilings.

(3) CELLS. (a) This subsection applies to all cells except receiving cells and holding rooms. Requirements for receiving cells are specified under sub. (5) and requirements for holding rooms are specified under sub. (7).

(b) Except if s. DOC 350.07 applies, each cell shall be designed and used for single occupancy only.

(c) Except if s. DOC 350.07 applies, each cell shall have a floor area of at least 54 square feet. The distance between the floor and ceiling may not be less than 8 feet and the distance between opposite walls may not be less than 6 feet.

(d) Each cell shall have:

1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of a similar strength for each inmate;
2. A detention strength, metal, institution-type wash basin and toilet. The wash basin shall have hot and cold running water;
3. There shall be a dimming capability or there shall be a night light to allow for comfortable sleeping; and
4. A detention strength, metal, institution-type mirror that is not removable.

(e) Each dayroom shall have a floor area of at least 54 square feet. The distance between the floor and ceiling may not be less than 6 feet.

(f) Each dayroom shall have detention strength tables and seating for the number of occupants of the dormitory or cells that have access to the dayroom.

(g) Illumination in dayrooms may not be less than 10 footcandles, 30 inches above the floor.

(4) DAYROOMS. (a) All dormitories and cells, except receiving cells and holding rooms, shall be provided with one or more dayrooms in their immediate vicinity that are accessible to inmates. If the dayroom is an area within a dormitory, the requirements under sub. (6) apply.

(b) Each dayroom shall have a floor area of at least 54 square feet. The distance between the floor and ceiling may not be less than 6 feet and the distance between opposite walls may not be less than 6 feet.

(c) Each receiving cell shall have:

1. A rigidly constructed metal bed with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of a similar strength;
2. A detention strength, metal, institution-type wash basin and toilet. The wash basin and toilet may be combined in one unit. The wash basin shall have hot and cold running water;
3. Detention strength light fixtures that shall provide at least 10 footcandles of illumination, 30 inches above the floor. Lights shall have a dimming capability or there shall be a night light to allow for comfortable sleeping.

(6) DORMITORIES. (a) Inmates may be housed in dormitories if the inmates are of the same security classification and properly segregated as required under s. 302.36, Stats.

(b) Each dormitory shall have a minimum floor area of 35 square feet per occupant, excluding the toilet and shower area. Each dormitory shall have a floor to ceiling height of not less than 8 feet.

(c) A detention strength bed shall be provided for each occupant of a dormitory.
(d) A secured area for personal property shall be provided for each occupant of a dormitory.

(e) Dormitories shall be provided with illumination of at least 10 footcandles 30 inches above the floor and with the ability to reduce lighting during sleeping hours to a level which is enough for security checks.

(f) Each dormitory shall provide adequate showers or bathtubs, toilets and wash basins for the occupants. Each dormitory shall have hot and cold running water and the hot water shall maintain a minimum temperature of 110°F to the mixer. In this subsection, “mixer” means the part of the plumbing system which combines hot and cold water.

(g) Dormitories shall be constructed of materials of detention strength and shall be provided with detention strength equipment.

(7) Holding rooms. (a) Holding rooms shall only be used for admission, release and investigative purposes. A holding room may not be used as a cell, dormitory or receiving cell. Holding rooms shall be located in an area that allows continuous staff observation or electronic video surveillance of inmates. Supervision is subject to the requirements of ss. 302.41 and 302.42, Stats.

(b) Holding rooms may be designed and used for multiple occupancy for inmates of the same classification who are properly segregated under ss. 938.209 and 302.36, Stats.

(c) Each holding room shall contain detention strength, rigidly constructed seats or benches bracketed to the wall or bolted to the floor or seats or benches of masonry construction of a similar strength.

(d) A detention strength, institution-type wash basin and toilet shall be provided.

(e) A holding room shall have a floor area of at least 50 square feet with an additional 10 square feet for each occupant above 5.

(8) Multipurpose room. Each jail shall provide a multipurpose room for recreation, physical exercise and congregate assembly other than visiting. The multipurpose room shall have a minimum floor area of 300 square feet.

(9) Exterior windows. (a) This subsection applies to all windows that lead to the exterior of the jail or to an area outside the secure perimeter of the jail.

(b) All exterior windows shall be translucent or shall be located to prevent persons outside the secure perimeter of the jail from observing inmates within the jail.

(c) Each exterior window that has an opening in any direction in excess of 5 1/2 inches shall be covered with security steel grills to prevent escape.

(d) If an exterior window is accessible to inmates and opens, the window shall be mounted in a detention strength frame and shall be covered on the inside with a 1,600 pound per lineal inch tensile strength security screen of .047 mil. wire diameter to prevent the passage of contraband.

(e) If an exterior window is not accessible to inmates and opens, the window’s security screen need not meet the requirements of par. (d), but the screen shall have a tensile strength of at least 800 pounds per lineal inch and shall be made of wire of at least .028 mil. diameter.

(f) If an exterior window does not open, whether or not it is accessible to inmates, the security screen required under par. (d) or (e) may be omitted if the window is mounted in a detention strength frame and the pane is security glass of sufficient strength to resist breakage and prevent the passage of contraband.

(10) Exterior approaches. The exterior of the jail and approaches to the jail shall be well lighted at night to permit observation of persons approaching the building.

(11) Walls. (a) Walls on the exterior of the jail shall be constructed of reinforced concrete or fully grouted concrete block at least 8 inches thick, or the walls shall be constructed of materials of similar strength which provide equivalent security.

(b) Walls in the interior of the jail shall be constructed of reinforced concrete or fully grouted concrete block at least 6 inches thick, or the walls shall be constructed of materials of similar strength which provide equivalent security.

(12) Ceilings. Ceilings in areas accessible to inmates shall be constructed of pre-cast concrete or flat steel of at least 3/16 inch thickness, or ceilings shall be constructed of materials of similar strength which provide equivalent security.

(13) Doors and locks. (a) Every door that leads to the exterior of the jail or to an area outside the secure perimeter of the jail shall have a sill designed to prevent the introduction of contraband.

(b) Every door entering into the secure perimeter of the jail shall be of detention strength. Each of these doors shall have a vision panel or other means of observation to permit identification of individuals before they enter an area within the secure perimeter of the jail and to allow observation of an area before entering it. If the vision panel has an opening in any direction in excess of 5 1/2 inches, the opening shall be covered with detention strength steel grills to prevent escape.

(c) In multiple cell sections, except for receiving cell sections, the mechanical means of emergency release may not be operated by key locks in the door or cells. The mechanical means of emergency release shall be operated by remote control located in an area not accessible to inmates. In receiving cells, the mechanical means of emergency release may be operated by key locks in the doors of cells.

(14) Access to controls. Inmates may not have access to plumbing, wiring, vents, thermostats, switches or controls, except that inmates in dormitories may have limited control over lights, heating, radios and televisions.

History: Cr. Register, February, 1990, No. 140, eff. 3–1–90; r. and recr. (3), (a.m. 404) eff. (3) and (b), (6) (b), (d) and (f), (7) (a) and (d), Register, November, 1990, No. 419, eff. 12–1–90; correction in (7) (b) made under 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522.

DOC 350.06 Physical environment of existing jails.
(1) This section applies to jails that were constructed before March 1, 1990 and have not been substantially remodeled on or after March 1, 1990.

(2) Except if s. DOC 350.07 applies, each cell shall be designed and used for single occupancy only.

(3) Except if s. DOC 350.07 applies, each cell shall be at least 5 1/2 feet wide and 7 1/2 feet long.

(4) Each cell shall contain a rigidly constructed metal bunk with the frame bracketed to the wall or bolted to the floor or a bed built in masonry construction of a similar strength for each inmate, a prison-type wash bowl and a prison-type toilet.

(5) There shall be adequate showers or bathtubs for the inmates. The supply of hot and cold water shall be adequate.

(6) Inmates may be housed in dormitories if the inmates are of the same security classification and properly segregated as required under s. 302.36, Stats. Dormitories may be used for Huber law inmates or other groups by classification. Dormitories shall include sufficient wash basins, toilets and showers.

(7) All windows accessible to prisoners shall be covered with a heavy gauge screen of 9/16 mesh or less or a detention screen to prevent passage of contraband. If the window leads to the exterior of the jail or to an area outside the secure perimeter of the jail and the exterior window does not open, the detention screen may be omitted if the window is mounted in a detention strength frame and the pane is security glass of sufficient strength to resist breakage and prevent the passage of contraband.

(8) An approved security door with an observation opening shall be provided for each entrance into the secure perimeter of a jail. The door may not be unlocked except to admit authorized persons and inmates.
(9) A detention strength locking device shall be installed on all security doors. Jail sections having multiple cells shall be provided with locking devices so that doors may be unlocked by a remote release located in an area not accessible to inmates.

(10) The exterior of and approaches to the jail shall be well lighted at night to permit observation of persons approaching the building.

History: Cr. Register, February, 1990, No. 410, eff. 3–1–90; r. and recr. Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.07 Double occupancy.** A jail may use cells for double occupancy if all of the following conditions are met:

(1) (a) In jails that are constructed or substantially remodeled on or after March 1, 1990, to be used for double occupancy, a cell shall have a floor area of at least 70 square feet.

(b) In jails that were constructed before March 1, 1990, and have not been substantially remodeled on or after March 1, 1990, to be used for double occupancy, a cell shall have a floor area of at least 54 square feet.

(2) The county board and sheriff shall determine jointly the adequate staffing needs, including support staff and services, that are required to ensure the health, safety and security of the jail staff and inmates when using cells for double occupancy. The county board and sheriff shall reduce any joint determinations to writing, signed by representatives of the county board and sheriff, and shall file the written joint determination with the department. The written joint determination shall remain in effect until rescinded or amended by mutual written agreement of the county board and sheriff. Unless there is adequate staff as agreed upon by the county board and sheriff, double celling may not occur.

(3) Inmates housed in the same cell shall have the same security classification and be properly segregated as required under s. 302.32, Stats.

(4) Except in an emergency, inmates shall be allowed out of their cells a minimum of 14 hours per day.

(5) At any given time, at least one cell or 15% of a jail’s total number of cells used for male prisoners, excluding receiving cells and holding rooms, whichever is greater and, at least one cell or 15% of a jail’s total number of cells used for female prisoners, excluding receiving cells and holding rooms, whichever is greater, may not be used for double occupancy.

(6) Receiving cells may not be used for double occupancy;

(7) When inmates are locked in their cells, jail staff shall physically observe each inmate in all areas of the jail containing double occupancy cells at least once every 60 minutes at irregular intervals;

(8) Each cell used for double occupancy shall have a dayroom in its immediate vicinity that is accessible to inmates. The dayroom shall have detention strength tables and seating for the number of occupants of the cells that have access to the dayroom; and

(9) If a jail uses cells for double occupancy in a housing unit, the dayrooms in that housing unit may not be used for sleeping purpose.

History: Cr. Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.08 Sanitation and hygiene.** All jails shall meet the requirements of ch. DHS 190. In addition:

(1) Inmates assigned to the kitchen who prepare, handle or serve food shall bathe or shower daily;

(2) Blankets shall be laundered or sterilized before reissue. Blankets used with sheets shall be laundered at least every 3 months and blankets used without sheets shall be laundered at least weekly.

(3) Sheets, pillowcases and mattress covers shall be changed and washed at least weekly;

(4) Clean towels shall be issued to each inmate twice a week;

(5) Mattresses shall be provided where there is a need for overnight detention. Each mattress and each pillow, if used, shall be covered with a fire retardant, waterproof, easy-to-sanitize material. Mattresses and pillows shall be kept in good repair and in a clean and sanitary condition. The sheriff shall provide adequate bedding;

(6) Suppliers of mattresses and pillows shall provide evidence to the sheriff that the products are fire retardant, waterproof and easy to clean; and

(7) Mattresses shall be at least 3 inches thick and of proper size to fit the bed.

(8) Containers of poisonous compounds used for exterminating rodents or insects shall be prominently and distinctly labeled for easy identification of contents. Poisonous compounds shall be stored independently and separately from food and kitchenware in a locked area not accessible to inmates;

(9) The sheriff shall provide an inmate whose clothing has been confiscated with adequate and appropriate clothing, including footwear, for use while the inmate is in custody.

(10) After 24 hours, inmates shall be notified that, upon request, they will be provided with towels and toilet articles sufficient for the maintenance of cleanliness and hygiene, including toothpaste and toothbrush, soap and comb. Basic feminine hygiene materials and toilet paper shall be provided to inmates upon request. There shall be no common use of toothbrushes, combs, shaving materials or feminine hygiene materials.

History: Cr. Register, February, 1990, No. 410, eff. 3–1–90; r. and recr. Register, November, 1990, No. 419, eff. 12–1–90; r. and recr. Register, December, 1992, No. 444, eff. 1–1–93; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats.

**DOC 350.09 Health care.** (1) The sheriff shall provide or secure necessary medical treatment and emergency dental care for inmates in custody.

(2) No prescription medications or treatments may be administered unless prescribed by a physician. If a nurse or physician is not available, jail staff may deliver prescribed doses of oral medication at prescribed times.

(3) Medical records shall be kept separate from other records and shall be maintained in a confidential manner in accordance with ss. 146.81 to 146.83, Stats., and any other applicable state or federal laws.

(4) Any medications kept at the jail shall be stored in a locked drug cabinet that is not accessible to inmates.

(5) If an inmate dies or becomes acutely ill while in custody, the next of kin shall be notified as soon as possible.

(6) Inmates shall be served nutritionally balanced meals. Menus shall be kept for 90 days for review. An inmate shall be provided with a special diet if ordered by a physician.

History: Cr. Register, February, 1990, No. 410, eff. 3–1–90; r. and recr. Register, November, 1990, No. 419, eff. 12–1–90; r. (1), renum. (2) to (6) and (8) to (10), Register, November, 1990, No. 419, eff. 12–1–90; r. (1), renum. (2) to (6) and (8) to (10) to be DOC 350.08 (8) to (10), Register, December, 1992, No. 444, eff. 1–1–93; correction in (intro.) made under s. 13.92 (4) (b) 7., Stats.

**DOC 350.10 Fire safety.** (1) Each jail shall have and shall properly maintain fire alarms, smoke and thermal detectors, fire extinguishers, fire attack equipment and self–contained breathing apparatuses which operate for at least 30 minutes. This equipment shall be placed in the jail in accordance with the advice of the local fire department.

(2) Each jail shall develop written policies on fire protection, evacuation, including evacuation of persons with disabilities, and training of staff in equipment use and evacuation. The policies shall comply with local fire department recommendations.

(3) The evacuation route developed as part of the evacuation policy under sub. (2) shall be posted in a conspicuous place for jail staff in the jail.
The sheriff shall arrange for a fire inspection by the local fire department at least once every 6 months. Documentation of fire inspections shall be included in facility files.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90; renum. from DOC 350.09 and am. (4), Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.11 Records and reporting.** (1) **REGISTER OF INMATES.** Each jail shall keep a register of all inmates. The register shall contain identifying information on each inmate, including name, residence, age, sex, race, court order, time and cause of placement and placing authority, and time of release and releasing authority. If an inmate escapes, the time and manner of the escape shall be recorded in the register.

(2) **JAIL LOG.** Each jail shall have a log which shall include the information required in ss. DOC 350.12 (1) and (5), 350.13 (5), and 350.15 (2) (g) and (3) (k). The log shall be maintained by shift on a daily basis.

(3) **STORAGE OF RECORDS.** Records shall be kept in a secure area. Juvenile records shall be separated from records of inmates 18 years of age or older and shall be maintained in a confidential manner in accordance with s. 938.396, Stats., and any other applicable federal or state law.

(4) **REPORTING REQUIREMENTS.** (a) The sheriff shall notify the division’s regional detention facilities specialist within 48 hours after any of the following events occur:

1. An inmate dies; or
2. An inmate attempts suicide and is admitted to a hospital, not including an emergency room admission or admission for detention and evaluation under ch. 51, Stats., or is provided medical treatment for a life-threatening injury incurred as a result of the suicide attempt.

(b) Information requested by the division shall be promptly furnished by the sheriff.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90; correction in (3) made under 13.93 (2m) (b) 7., Stats., Register, June, 1999.

**DOC 350.12 Security.** (1) Jail staff shall conduct physical inspections of each inmate in all areas of the jail occupied by inmates at frequent and irregular intervals, during the day or night, to ensure that inmates are in custody and are safe. Inmates who have been identified by jail staff as having a special medical or mental health problem shall be physically observed at more frequent intervals. Each inspection shall be documented.

(2) There shall be at least 3 complete sets of jail and fire escape keys, one set in use, one set stored in a safe place which is accessible only to jail personnel for use in an emergency and one set stored in a secure place outside the jail.

(3) All jail personnel shall be given instructions concerning the use and storage of jail and fire escape keys and shall be held strictly accountable for keys assigned to them.

(4) All jail personnel shall be familiar with the locking system of the jail and shall be able to release inmates promptly in the event of a fire or other emergency.

(5) The sheriff shall ensure that monthly inspections are made to determine if cell and fire escape locks and doors are in good working order. Each inspection shall be recorded in the jail log.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90; renum. from DOC 350.11 and am. (1) and (5), Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.13 Administrative confinement.** (1) In this section, “administrative confinement” means a nonpunitive, segregated confinement of an inmate in his or her cell or other isolated area solely because he or she is dangerous, to ensure personal safety and security within the jail.

(2) An inmate may be placed in administrative confinement only if the inmate’s continued presence in the general population:

(a) Presents a substantial risk of physical harm to the inmate, another person or property;

(b) Threatens the security and order of the jail; or

(c) Inhibits a pending disciplinary investigation.

(3) A jail staff member shall inform his or her immediate supervisor of any incident that may require administrative confinement of an inmate and the supervisor shall determine whether to place the inmate in administrative confinement. In the absence of his or her immediate supervisor, a jail staff member may place an inmate in administrative confinement. The staff member’s supervisor shall review that placement decision within 24 hours.

(4) An inmate’s progress in administrative confinement shall be periodically reviewed by the jail staff member’s immediate supervisor. The supervisor shall determine when the inmate no longer presents a threat to the safety, security and order of the jail and may be released to the general population.

(5) The reason an inmate is placed in administrative confinement and the length of time the inmate remains in administrative confinement shall be entered in the inmate’s file and in the jail log by the jail staff member or his or her immediate supervisor.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90; renum. from DOC 350.12, Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.14 Use of force.** (1) Jail staff may use physical force against an inmate only if force is necessary to change the location of an inmate or to prevent death or bodily injury to the staff member, the inmate or someone else, unlawful damage to property or the escape of an inmate from the jail. Staff may use only the amount of force reasonably necessary to achieve the objective for which force is used. Corporal punishment of inmates is forbidden.

(2) Any staff member who has used force to control an inmate or inmates shall submit a written report to the sheriff, jail administrator or the staff member’s immediate supervisor describing the incident. The report shall include all known relevant facts.

**History:** Cr. Register, February, 1990, No. 410, eff. 3–1–90; renum. from DOC 350.13, Register, November, 1990, No. 419, eff. 12–1–90.

**DOC 350.15 Discipline.** (1) **INMATE RULES OF BEHAVIOR.** Every jail shall have written rules of behavior for inmates. At the time of admission, each person shall be notified verbally of the existence of the jail’s rules for inmate behavior and the potential disciplinary actions imposed for violation of the rules. Each inmate shall be provided with a copy of the jail rules or copies of the rules shall be posted in conspicuous places in the jail.

(2) **DISCIPLINE FOR A MINOR VIOLATION.** (a) In this subsection, “minor violation” means a violation of the jail’s rules of behavior for which a minor penalty or penalties may be imposed if the accused inmate is found guilty. A minor penalty is a verbal or written reprimand, restriction of privileges for 24 hours or less, or placement in punitive segregation for 24 hours or less.

(b) A staff member who observes an inmate committing a minor violation shall inform the inmate of the rule that he or she has violated, the contemplated penalty and the disciplinary procedures for minor violations under pars. (c) to (g).

(c) The staff member shall give the inmate an opportunity to make a verbal statement about the alleged violation to the staff member.

(d) The staff member may impose a minor penalty if he or she finds that a violation occurred.

(e) The staff member shall inform his or her supervisor of the incident and the penalty administered as soon as the supervisor is available. The supervisor shall review the incident and penalty administered. If the supervisor concludes that the violation constitutes a major violation, the alleged infraction shall be handled in accordance with sub. (3). If the supervisor finds that no violation has occurred, the inmate shall be notified that the charge has been dismissed.

(f) The inmate may appeal the supervisor’s decision. The jail shall have a procedure for an inmate to follow if the inmate wishes to appeal that decision. The inmate shall be notified of his or her...
right to appeal the supervisor’s decision and of the jail’s procedure for making the appeal.

(g) Information about the incident, the penalty administered and the supervisor’s decision shall be made part of the inmate’s file and shall be entered in the jail log. If the supervisor finds that no violation occurred or if the reviewer of an appeal submitted under par. (f) finds that no violation occurred, the records of the incident shall be removed from the inmate’s file.

(3) DISCIPLINE FOR A MAJOR VIOLATION. (a) In this subsection, “major violation” means a violation of the jail’s rules of behavior for which a major penalty or penalties may be imposed if the accused inmate is found guilty. A major penalty is the restriction of privileges for more than 24 hours, placement in solitary confinement for more than 24 hours in accordance with s. 302.40, Stats., loss of good time in accordance with s. 302.43, Stats., restrictions affecting Huber law privileges in accordance with s. 303.08, Stats., or restrictions affecting work release in accordance with s. 303.065, Stats.

(b) A staff member who observes an inmate committing a major violation shall submit a written report to his or her supervisor within 24 hours of the incident. The report shall include:
   1. A formal statement of the charge or charges, including the specific rule or rules violated;
   2. A detailed description of the facts concerning the incident, including the date and time of the incident;
   3. Any unusual inmate behavior;
   4. Staff and inmate witnesses;
   5. The disposition of any physical evidence;
   6. Any immediate action taken, including the use of force; and
   7. The staff member’s signature and the time and date of the report.

(c) The inmate shall be notified of the charges and of his or her right to a hearing under par. (d) at least 24 hours in advance of the hearing. The inmate may waive this time requirement.

(d) A due process hearing shall be held unless the inmate waives his or her right to a hearing. An inmate may waive the right to a due process hearing in writing at any time. If the inmate waives the right to a due process hearing, the violation shall be disposed of in accordance with the procedures for minor violations under sub. (2), except that a major penalty may be imposed if the relevant staff member finds a violation occurred. A waiver does not constitute an admission of the alleged violation.

(e) An impartial hearing officer or committee shall conduct the due process hearing. The hearing may not be conducted by a person who may review an appeal made under par. (j) or who has personally observed, been a part of or investigated the incident which is the subject of the hearing.

(f) The inmate has the right to be present at the hearing, to make a statement and to present relevant evidence. If the inmate refuses to attend the hearing or disrupts the hearing, the hearing may be conducted without the inmate being present. The hearing officer or committee may hear the testimony of a witness outside the presence of the accused inmate if there is a significant risk of bodily harm to the witness in testifying in front of the accused inmate. The reason for the accused inmate’s absence shall be documented.

(g) The inmate has the right to present any relevant witness whose testimony is not cumulative of other evidence unless the safety of any other witness or the security of the jail would be threatened if that witness testified. The reasons for the absence of the witness shall be documented.

(h) If the inmate is illiterate or the issues are complex, the inmate has the right to a staff advocate or adequate substitute aid to assist him or her in understanding the charges and preparing a defense.

(i) The hearing officer or committee shall issue a written decision which shall state the punishment to be administered. The inmate shall receive a written copy of the decision before punishment is administered.

(j) The inmate shall be notified of his or her right to appeal the hearing officer’s or committee’s decision and of the jail’s procedure for making an appeal.

(k) Information on the incident, the punishment administered and the hearing officer’s or committee’s decision shall be made part of the inmate’s file and shall be entered in the jail log. If the hearing officer or committee or the reviewer under par. (j), upon appeal, finds that no violation occurred, the record of the incident shall be removed from the inmate’s file.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90; renum. from DOC 350.14, Register, November, No. 419, eff. 12-1-90.

DOC 350.16 Exceptions. (1) The department may grant a variance to a requirement found in this chapter, except that no variance may be granted for the conditions required to permit double celling under s. DOC 350.07 or for any requirement specifically imposed by Wisconsin Statutes.

(2) In order to obtain a variance, the sheriff shall demonstrate in writing that strict enforcement of the rule would result in unreasonable hardship for administration of the jail and that the variance would provide equivalent or better protection for the health, safety, welfare and rights of inmates and the public.

(3) The department may impose specific conditions including reasonable time limits on a variance in order to protect the health, safety, rights or welfare of inmates or the public.

(4) Violation of any condition under which a variance is granted constitutes a violation of this chapter. Upon finding that there has been a violation of a condition of the variance, the department may revoke the variance and require strict enforcement of the rule.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90; renum. from DOC 350.15 and am. Register, November, 1990, No. 419, eff. 12-1-90.

DOC 350.17 Policy and procedure manual. (1) CONTENT OF MANUAL. The sheriff shall develop a written policy and procedure manual for the operation of each jail. The policies and procedures contained in the manual shall be developed in consultation with outside resources, such as medical, mental health, alcohol and other drug abuse, and developmental disabilities providers, and shall reference any agreements with such providers for the provision of services to inmates identified as needing care and treatment. The manual shall contain the following components:

(a) Statement of the availability of the manual to staff.

(b) Statement of the policies of the facility on inmate programs, including inmate health screening and care, suicide prevention, control and administration of medications, communicable disease control, mail, visitation, religious programming, recreation, reading materials, and canteen.

(c) Statement of the procedure for notification of inmates of each policy under par. (b).

(2) SUBMISSION AND APPROVAL OF MANUAL. (a) Division approval. The sheriff shall submit the initial policy and procedure manual to the division for approval by April 1, 1993.

1. The division shall approve or disapprove the manual in writing within 90 days after submission. If the division approves the manual, the division shall notify the sheriff in writing of the approval.

2. If the division disapproves the manual, the division shall notify the sheriff in writing of the decision and the reasons for the disapproval. If the sheriff accepts the decision, the sheriff shall submit a revised manual which conforms with the decision within 21 days of the date of the disapproval. If the sheriff does not accept the decision of the division, then the sheriff may appeal under par. (b).

(b) Appeal to secretary. Within 21 days of the date of the disapproval, the sheriff may appeal the division’s disapproval to the secretary. The secretary shall issue a decision within 30 days of the...
appeal. The decision shall be in writing and shall state the reasons for the decision. If required by the secretary’s decision, the sheriff shall modify the manual and resubmit it within 60 days of the decision to the division.

(c) Changes to manual. Any proposed substantive changes to an approved manual shall be submitted to the division and shall be reviewed under the procedures of this section.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

**DOC 350.18 Inmate health screening and care.** The manual under s. DOC 350.17 shall contain policies and procedures for inmate health screening and care, including the following components:

1. Health screening form which is developed in conjunction with health care professionals and which is used at booking to obtain information relating to each inmate’s medical and dental condition, medical illnesses or disabilities, mental illnesses, developmental disabilities, alcohol or other drug abuse problems and suicide risk.

2. Procedures for the documentation of health screening results, referrals made or health care provided and maintenance of documents in an inmate’s confidential medical file.

3. Names, addresses and telephone numbers of health care providers or agencies who have agreed to provide emergency and other health care services for special needs inmates.

4. Procedures for the referral of an inmate to jail health care staff or to other agencies which provide health care.

5. Designation of staff who have the authority to make health care decisions, including emergency medical and dental care.

6. Non-emergency health care, including use of an inmate’s personal physician.

7. Schedule of inmate access to routine medical care.

8. Procedure for processing inmate medical requests, including written disposition.

9. Documentation in an inmate’s confidential medical file of any referral and identification of the services provided, including emergency services.

10. Provision of special diet if ordered by a physician.

11. Maintenance of agreements between the jail and providers of health care services.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

**DOC 350.19 Suicide prevention.** The manual under s. DOC 350.17 shall contain policies and procedures relating to the supervision and housing of inmates who may be at risk of seriously injuring themselves, including the following components:

1. Assessment of an inmate’s suicide risk at booking and documentation of the results.

2. Designation of person who may assess an inmate’s level of suicide risk and who may authorize placement on and removal from a suicide watch status for inmates who are suicide risks.

3. Identification of housing areas for inmates who are suicide risks.

4. Referral of inmates who are suicide risks to mental health care providers or facilities.

5. Supervision of inmates who are suicide risks, including frequency of observation and documentation of supervision.

6. Communication between health care and jail personnel regarding the status of an inmate who is a suicide risk.

7. Intervention of a suicide in progress, including first aid measures.

8. List of persons to be notified in case of potential, attempted or completed suicides.

9. Documentation of actions and decisions regarding inmates who are suicide risks.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

**DOC 350.20 Control and administration of medications.** The manual under s. DOC 350.17 shall contain policies and procedures relating to the control and administration of prescription and nonprescription medications, including the following components:

1. Determination by appropriate personnel that all medications brought in by inmates or other persons for an inmate are necessary.

2. Inventory and secured storage of all medications brought into the jail.

3. Designation of staff who are authorized to administer or who are authorized to deliver medication to inmates.

4. Administration or delivery of prescription and nonprescription medications to inmates.

5. Documentation of all medication administered or delivered to an inmate, including, who prescribed the medication, who administered or delivered the medications and the date and time of administration or delivery. All refusals of recommended or prescribed medications by an inmate must be documented.

6. Return of an inmate’s medications inventoried at admission.

7. Inventory or disposal of unused medications upon the inmate’s release or transfer.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

**DOC 350.21 Communicable disease control.** The manual under s. DOC 350.17 shall contain policies and procedures relating to the care, treatment and supervision of inmates who may have communicable diseases, including the following components:

1. Provision of treatment and supervision of inmates during isolation or quarantine under s. 252.06 (6) (b), Stats.

2. Documentation of the need for isolation or quarantine under s. 252.06 (6) (b), Stats., in the inmate’s confidential medical file.

3. Provision of laboratory screening for inmates who may have been exposed to a communicable disease if ordered by medical personnel.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522.

**DOC 350.22 Mail.** The manual under s. DOC 350.17 shall contain policies and procedures relating to written contact between inmates and their families, friends, attorneys, the court system, governmental officials and others, including the following components:

1. Provision for staff inspection and reading of nonprivileged incoming and outgoing mail.

2. Delivery of all nonprivileged incoming mail.

3. Provision for the limited inspection of incoming and outgoing privileged mail.

4. Delivery of all approved privileged mail.

5. Inventory and disposition of contraband items found in mail.

6. Provision of postage to indigent inmates.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

**DOC 350.23 Visitation.** The manual under s. DOC 350.17 shall contain policies and procedures relating to visitation, including the following components:

1. Establishment of visitation schedule for family, friends, attorneys and others.

2. Establishment of procedures for requesting visitation during nonscheduled times.

3. Documentation of all visits through a visitor log or register.

4. Establishment of a search policy of visitors and their possessions.
DOC 350.23 Posting of visitation policies and procedures, including visitation schedule, in a place readily accessible to visitors and inmates.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.

DOC 350.24 Religious programming. The manual under s. DOC 350.17 shall contain policies and procedures relating to religious programming, including the following components:

(1) Identification of religious organizations and clergy willing to conduct religious services in the facility.
(2) Notification of inmates of the schedule of religious services available in the jail.
(3) Identification of religious items which may be kept on an inmate’s person or in the cell.
(4) Provision of Bibles or Qurans upon request under s. 302.39, Stats.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.

DOC 350.25 Recreation. The manual under s. DOC 350.17 shall contain policies and procedures identifying the recreational activities which are available and when they are scheduled.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.

DOC 350.26 Reading materials. The manual under s. DOC 350.17 shall contain policies and procedures relating to access to reading materials, including the following components:

(1) Provision of reading materials of general interest, such as books, newspapers and magazines, for inmates.
(2) Identification of reading materials which are prohibited for inmates because their content creates a security risk.
(3) Inspection of reading materials brought by visitors for inmates if the jail allows visitors to bring in reading materials.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.

DOC 350.27 Canteen. The manual under s. DOC 350.17 shall contain policies and procedures for the establishment and use of canteen, vending or other similar services for inmates.

History: Cr. Register, December, 1992, No. 444, eff. 1–1–93.
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**Form not turned in yet**

**Approval to hold juveniles was rescinded on December 10, 2009**

*All Residential*

Updated: 4/3/2012

**Authorized to hold juveniles**
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Indicates collocated facility

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Updated 4/3/2012
### All Municipal Lockups

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**Authorized to hold juveniles by DOC**

**Breakdown:**
- Holds: 0
- Jail Rem: 0
- DSO: 0
- SS Sep: 0

**TOTAL:** 0

**Notes:**
- Sites that are not visited are surveyed annually.
- Lookup decommissioned 2002.

**Updated 4/3/2012**
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Updated 4/3/2012
| Site                              | Date of Visit | Person Responsible | DSO                                      | Classification *All Residential |
|----------------------------------|---------------|--------------------|------------------------------------------|---------------------------------
| Mendota Mental Health Institute  |               |                    | Secure, Public, Adult-Juvenile Facility  |                                  |
| Winnebago Mental Health Institute|               |                    | Secure, Public, Adult-Juvenile Facility  |                                  |
| Sand Ridge Secure Treatment Center|               |                    | Secure, Public, Adult Facility           |                                  |

Updated 4/3/2012
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Updated 4/3/2012
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NOTE: 1995 Wis. Act 275, which made major revisions of Chapter 48, contains extensive explanatory notes.

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*2009−10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
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 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.

(h) To provide a just and humane program of services to nonmarital children, children and unborn children in need of protection or services, and the expectant mothers of those unborn children; to avoid duplication and waste of effort and money on the part of public and private agencies; and to coordinate and integrate a program of services to children and families.

(2) In Indian child custody proceedings, the best interests of the Indian child shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for child welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian children and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian children from their families and placing those children in out-of-home care placements, preadoptive placements, or adoptive placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home placement of Indian children and, when an out-of-home care placement, adoptive placement, or preadoptive placement is necessary, placing an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community.


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 (Cl. App. 1991).

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


The Indian child welfare act—tribal self-determination through participation in child custody proceedings. 1979 WLR 1202.
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(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.
(g) Manufacturing methamphetamine in violation of s. 961.41 (1) (e) under any of the following circumstances:
1. With a child physically present during the manufacture.
2. In a child's home, on the premises of a child's home, or in a motor vehicle located on the premises of a child's home.
3. Under any other circumstances in which a reasonable person should have known that the manufacture would be seen, smelled, or heard by a child.

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

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

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

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

(1s) “Approved treatment facility” has the meaning given in s. 51.012.

(2) “Child”, when used without further qualification, 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 any 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).

(2f) “Coordinated services plan of care” has the meaning given in s. 46.56 (1) (cm).

(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 children and families.

(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) 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.

(8d) “Indian” means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8g) “Indian child” means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe in any of the following ways:
(a) As a member of the Indian tribe.
(b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) “Indian child’s tribe” means one of the following:
(a) The Indian tribe in which an Indian child is a member or eligible for membership.
(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(8p) “Indian custodian” means an Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

(9) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

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

(10r) “Juvenile 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.

(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.

(12g) “Neglect” means failure, refusal or inability on the part of a caregiver, 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.

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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*.

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(13) “Parent” means a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, “parent” includes a person acknowledged under s. 767.803 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. For purposes of the application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian child, including an adoption under tribal law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.803, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but 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.

(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) “Secretary” means the secretary of children and families.

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

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

(19) “Tribal school” has the meaning given in s. 115.001 (15m).

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


Under sub. (13), a deceased parent continues to be a 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. Kruczek, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95–2480.

While the second sentence of sub. (13) applies exclusively to nonmarital children, the first sentence does not apply exclusively to children of married individuals. Due process and equal protection; classifications based on illegitimacy. Bazos, 475 N.W.2d 87 (1991).

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. 938.185, 938.34 (4h), (4m) or (4n) or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).


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 (Cl. App. 1999), 98–3285.

A guardian has general authority to consent to medication for a ward, but may consent to psychiatric, medical or surgical treatment only in an emergency under ch. 455; or by virtue of the presumption established by the artificial insemination statute. While a circuit court possesses common law authority to order visitation, it has no authority outside of the statutes to confer parental rights. Dystarly H. v. Bethany H. 2014 Wis. App 2, 331 Wis. 2d 158, 794 N.W.2d 230, 08–2587.

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

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not...
subsequently internarry under s. 767.803 and whose paternity has not been established may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting the child. The department may not charge a fee for filing a declaration under this section.

(2) (a) A declaration under sub. (1) may be filed at any time before a termination of the father’s parental rights under subch. VIII. This paragraph does not apply to a declaration that is filed on or after July 1, 2006.

(b) A declaration under sub. (1) may be filed at any time before the birth of the child or within 14 days after the birth of the child, except that a man who receives a notice under s. 48.42 (1g) (b) may file a declaration within 21 days after the date on which the notice was mailed. This paragraph does not apply to a declaration filed before July 1, 2006.

(c) The declaration shall be in writing, shall be signed and verified upon oath or affirmation by the person filing the declaration, and shall contain the person’s name and address, the name and last–known address of the mother, the month and year of the birth or expected birth of the child, and a statement that the person filing the declaration has reason to believe that he or she is the father of the child. If the person filing the declaration is under 18 years of age, the declaration shall also be signed by a parent or guardian of the person.

(d) A person who has filed a declaration under sub. (1) may revoke the declaration at any time by filing with the department a statement, signed and verified upon oath or affirmation, that the person, to the best of his knowledge and belief, is not the father of the child or that another person has been adjudicated as the father of the child. If the person filing the revocation is under 18 years of age, the revocation shall also be signed by a parent or guardian of the person.

(3) (a) The department shall keep confidential and may not open to public inspection or disclose the contents of any declaration, revocation of a declaration, or response to a declaration filed under this section, except as provided under pars. (b) and (c) by order of the court for good cause shown.

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

(c) A court in a proceeding under s. 48.13, 48.133, 48.14, or 938.25 or under a substantially similar law of another state and may not use or disclose that information for any other purpose except by order of the court for good cause shown.

(d) Any person who obtains any information under this subsection may use or disclose that information only for the purposes of a proceeding under s. 48.13, 48.133, 48.14, or 938.25 or under a substantially similar law of another state and may not use or disclose that information for any other purpose except by order of the court for good cause shown.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.
A member of the Indian child’s tribe recognized by the Indian child’s tribal community as knowledgeable regarding the tribe’s customs relating to family organization or child-rearing practices.

2. A member of another tribe who is knowledgeable regarding the customs of the Indian child’s tribe relating to family organization or child-rearing practices.

3. A professional person having substantial education and experience in the tribe’s professional specialty and having substantial knowledge of the customs, traditions, and values of the Indian child’s tribe relating to family organization and child-rearing practices.

4. A layperson having substantial experience in the delivery of child and family services to Indians and substantial knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian child’s tribe.

(h) “Reservation” means Indian country, as defined in 18 USC 1151, as amended, and not covered under that section to which title is vested in the state by federal law and except as provided in subd. 1.

(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS.

(a) Applicability. This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to any Indian child custody proceeding regardless of whether the Indian child is in the legal custody or physical custody of an Indian parent, Indian custodian, extended family member, or other person at the commencement of the proceeding and whether the Indian child resides or is domiciled on or off of a reservation. A court assigned to exercise jurisdiction under this chapter may not determine whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian child custody proceeding based on whether the Indian child is part of an existing Indian family.

(b) Exclusive tribal jurisdiction. 1. An Indian tribe shall have exclusive jurisdiction over any Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except when the proceeding is otherwise vested in the state by federal law and as excepted as provided in subd. 2.

2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the child.

Subdivision 1. does not prevent an Indian child who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent physical harm or damage to the Indian child. The person taking the Indian child into custody or the intake worker shall immediately release the Indian child from custody upon determining that holding the Indian child in custody is no longer necessary to prevent imminent physical damage or harm to the Indian child and shall expeditiously restore the Indian child to his or her parent or Indian custodian, release the Indian child to an appropriate official of the Indian child’s tribe, or initiate an Indian child custody proceeding, as may be appropriate.

(c) Transfer of proceedings to tribe. In any Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, an Indian child who is not residing or domiciled within the reservation of the Indian child’s tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child’s parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian child objects to the transfer.

2. The Indian child’s tribe does not have a tribal court, or the tribal court of the Indian child’s tribe declines jurisdiction.

3. The court determines that good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child’s tribe. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that any of the following applies:

a. The Indian child is 12 years of age or over and objects to the transfer.

b. The evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court’s rules of evidence.

c. The Indian child’s tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the Indian child’s tribe that are applicable to an Indian child custody proceeding to substantial and immediate danger or the threat of that danger.

3. The Indian child’s tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the Indian child’s tribe that are applicable to an Indian child custody proceeding to substantial and immediate danger or the threat of that danger.

4. COURT PROCEEDINGS.

(a) Notice. In any involuntary proceeding involving the out-of-home care placement of, or termination of parental rights to, an Indian child the court shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(b) Civil contempt proceedings. Notice. The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(c) Transfer of proceedings to tribe. In any Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, an Indian child who is not residing or domiciled within the reservation of the Indian child’s tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child’s parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian child objects to the transfer.

2. The Indian child’s tribe does not have a tribal court, or the tribal court of the Indian child’s tribe declines jurisdiction.

3. The court determines that good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child’s tribe. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that any of the following applies:

a. The Indian child is 12 years of age or over and objects to the transfer.

b. The evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court’s rules of evidence.

c. The Indian child’s tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the Indian child’s tribe that are applicable to an Indian child custody proceeding to substantial and immediate danger or the threat of that danger.

3. The Indian child’s tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the Indian child’s tribe that are applicable to an Indian child custody proceeding to substantial and immediate danger or the threat of that danger.

4. COURT PROCEEDINGS.

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(b) Civil contempt proceedings. Notice. The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(c) Transfer of proceedings to tribe. In any Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, an Indian child who is not residing or domiciled within the reservation of the Indian child’s tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child’s parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:
to 20 additional days to enable the requester to prepare for that hearing.

(b) Appointment of counsel. Whenever an Indian child is the subject of a proceeding involving the removal of the Indian child from the home of his or her parent or Indian custodian, placement of the Indian child in an out-of-home care placement, or termination of parental rights to the Indian child, the Indian child’s parent or Indian custodian shall have the right to be represented by court-appointed counsel as provided in s. 48.23 (2g). The court may also, in its discretion, appoint counsel for the Indian child under s. 48.23 (1m) or (3) if the court finds that the appointment is in the best interests of the Indian child.

(c) Examination of reports and other documents. Each party to a proceeding involving the out-of-home care placement of, termination of parental rights to, or return of custody under sub. (8) of an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the out-of-home care placement, termination of parental rights, or return of custody may be based.

(d) Out-of-home care placement; serious damage and active efforts. The court may not order an Indian child to be removed from the home of the Indian child’s parent or Indian custodian and placed in an out-of-home care placement unless all of the following occurs:

1. The court or jury finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (f), that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court or jury finds by clear and convincing evidence that active efforts, as described in par. (g) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. The court or jury shall make that finding notwithstanding that a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies.

(e) Involuntary termination of parental rights; serious damage and active efforts. The court may not order an involuntary termination of parental rights to an Indian child unless all of the following occur:

1. The court or jury finds beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (f), that the continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

2. The court or jury finds by clear and convincing evidence that active efforts, as described in par. (g) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

(f) Qualified expert witness; order of preference. Any party to a proceeding involving the out-of-home care placement of, involuntary termination of parental rights to, an Indian child may call a qualified expert witness. Subject to subd. 2., a qualified expert witness shall be chosen in the following order of preference:

a. A member of the Indian child’s tribe described in sub. (2) (g) 1.

b. A member of another tribe described in sub. (2) (g) 2.

c. A professional person described in sub. (2) (g) 3.

d. A layperson described in sub. (2) (g) 4.

2. A qualified expert witness from a lower order of preference may be chosen solely because a qualified expert witness from a higher order of preference is able to participate in the Indian child custody proceeding only by telephone or live audiovisual means as prescribed in s. 807.13 (2). The fact that a qualified expert witness called by one party is from a lower order of preference under subd. 1. than a qualified expert witness called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witnesses. In weighing the testimony of all witnesses, the court shall consider as paramount the best interests of the Indian child as provided in s. 48.01 (2). The court shall determine the qualifications of a qualified expert witness as provided in ch. 907.

(g) Active efforts standard. 1. The court may not order an Indian child to be removed from the home of the Indian child’s parent or Indian custodian and placed in an out-of-home care placement unless the evidence of active efforts under par. (d) 2. or (e) 2. shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe and that utilizes the available resources of the Indian child’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers. The consideration by the court or jury of whether active efforts were made under par. (d) 2. or (e) 2. shall include whether all of the following activities were conducted:

a. Representatives designated by the Indian child’s tribe with substantial knowledge of the prevailing social and cultural standards and child-rearing practice within the tribal community were requested to evaluate the circumstances of the Indian child’s family and to assist in developing a case plan that uses the resources of the tribe and of the Indian community, including traditional and customary support, actions, and services, to address those circumstances.

b. A comprehensive assessment of the situation of the Indian child’s family was completed, including a determination of the likelihood of protecting the Indian child’s health, safety, and welfare effectively in the Indian child’s home.

c. Representatives of the Indian child’s tribe were identified, notified, and invited to participate in all aspects of the Indian child custody proceeding at the earliest possible point in the proceeding and their advice was actively solicited throughout the proceeding.

d. Extended family members of the Indian child, including extended family members who were identified by the Indian child’s tribe or parents, were notified and consulted with to identify and provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child.

e. Arrangements were made to provide natural and supervised family interaction in the most natural setting that can ensure the Indian child’s safety, as appropriate to the goals of the Indian child’s permanency plan, including arrangements for transportation and other assistance to enable family members to participate in that interaction.

f. All available family preservation strategies were offered or employed and the involvement of the Indian child’s tribe was requested to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian child’s tribe.

g. Community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child’s family with special needs were identified, information about those resources was provided to the Indian child’s family, and the Indian child’s family was actively assisted or offered active assistance in accessing those resources.

h. Monitoring of client progress and client participation in services was provided.
h. A consideration of alternative ways of addressing the needs of the Indian child’s family was provided, if services did not exist or if existing services were not available to the family.

2. If any of the activities specified in subd. 1. a. to h. were not conducted, the person seeking the out-of-home care placement or involuntary termination of parental rights shall submit documentation to the court explaining why the activity was not conducted.

**5 Voluntary Proceedings; Consent; Withdrawal.** (a) Out-of-home placement. A voluntary consent by a parent or Indian custodian to an out-of-home care placement of an Indian child under s. 48.63 (1) or (5) (b) or a delegation of powers by a parent regarding the care and custody of an Indian child under s. 48.979 is not valid unless the consent or delegation is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent or delegation were fully explained in detail to and were fully understood by the parent or Indian custodian. The judge shall also certify that the parent or Indian custodian fully understood the explanation in English or that the explanation was interpreted into a language that the parent or Indian custodian understood. Any consent or delegation of powers given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent or Indian custodian who has executed a consent or delegation of powers under this paragraph may withdraw the consent for any reason at any time, and the Indian child shall be returned to the parent or Indian custodian. A parent or Indian custodian who has executed a consent or delegation of powers under this paragraph may also move to invalidate the out-of-home care placement or delegation of powers under sub. (6).

(b) Termination of parental rights. A voluntary consent by a parent to a termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The judge shall also certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Any consent given under this paragraph prior to or within 10 days after the birth of the Indian child is not valid. A parent who has executed a consent under this paragraph may withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights, and the Indian child shall be returned to his or her parent unless an order or agreement specified in s. 48.368 (1) or 938.368 (1) provides for a different placement. After the entry of a final order terminating parental rights, a parent who has executed a consent under this paragraph may withdraw that consent as provided in par. (c), move to invalidate the termination of parental rights under sub. (6), or move for relief from the judgment under s. 48.46 (2).

(c) Withdrawal of consent after order granting adoption. After the entry of a final order granting adoption of an Indian child, a parent who has consented to termination of parental rights under s. 48.41 (2) (e) may withdraw that consent and move the court for relief from the judgment on the grounds that the consent was obtained through fraud or duress. Any such motion shall be filed within 2 years after the date of the final order of adoption of the Indian child. A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights or granting adoption. If the court finds that the consent was obtained through fraud or duress, the court shall vacate the judgment or order terminating parental rights and, if applicable, the order granting adoption and return the Indian child to the custody of the parent, unless an order or agreement specified in s. 48.368 (1) or 938.368 (1) that was in effect prior to the termination of parental rights provides for a different placement.

**6 Invalidation of Action.** Any Indian child who is the subject of an out-of-home care placement, of a delegation of powers under s. 48.979, or of a termination of parental rights proceeding, any parent or Indian custodian from whose custody that Indian child was removed, or the Indian child’s tribe may move the court to invalidate that out-of-home care placement, delegation of powers, or termination of parental rights on the grounds that the out-of-home care placement or delegation of powers was made or the termination of parental rights was ordered in violation of 25 USC 1911, 1912, or 1913. If the court finds that those grounds exist, the court shall invalidate the out-of-home care placement, delegation of powers, or termination of parental rights.

**7 Placement of Indian Child.** (a) Adoptive placement; preferences. Subject to pars. (c) and (d), in placing an Indian child for adoption, preference shall be given, in the absence of good cause, as described in par. (e), to the contrary, to a placement with one of the following, in the order of preference listed:

1. An extended family member of the Indian child.
2. Another member of the Indian child’s tribe.
3. Another Indian family.

(b) Out-of-home care or preadoptive placement; preferences. Any Indian child who is accepted for an out-of-home care placement or a preadoptive placement shall be placed in the least restrictive setting that most approximates a family, that meets the Indian child’s special needs, if any, and that is within reasonable proximity to the Indian child’s home, taking into account those special needs. Subject to pars. (c) to (e), in placing an Indian child in an out-of-home care placement or a preadoptive placement, preference shall be given, in the absence of good cause, as described in par. (e), to the contrary, to a placement in one of the following, in the order of preference listed:

1. The home of an extended family member of the Indian child.
2. A foster home licensed, approved, or specified by the Indian child’s tribe.
3. An Indian foster home licensed or approved by the department, a county department, or a child welfare agency.
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

(bm) Temporary physical custody; preferences. Any Indian child who is being held in temporary physical custody under s. 48.205 (1) shall be placed in compliance with par. (b) or, if applicable, par. (e), unless the person responsible for determining the placement finds good cause, as described in par. (e), for departing from the order of placement preference under par. (b) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child shall be placed in compliance with the order of placement preference under par. (b) or, if applicable, par. (c).

(c) Tribal or personal preferences. In placing an Indian child under par. (a), (b), or (bm), if the Indian child’s tribe has established, by resolution, an order of preference that is different from the order specified in par. (a) or (b), the order of preference established by that tribe shall be followed, in the absence of good cause, as described in par. (e), to the contrary, as long as the placement under par. (a) is appropriate for the Indian child’s special needs, if any, and the placement under par. (b) or (bm) is the least restrictive setting appropriate for the Indian child’s needs as specified in par. (b). When appropriate, the preference of the Indian child or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight in determining the placement.

(d) Social and cultural standards. The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian child’s parents or extended family members reside or with which the Indian child’s parents or extended family members maintain social and cultural ties.
(e) Good cause. 1. Whether there is good cause to depart from the order of placement preference under par. (a), (b), or (c) shall be determined based on any one or more of the following considerations:

a. When appropriate, the request of the Indian child’s parent or, if the Indian child is of sufficient age and developmental level to make an informed decision, the Indian child, unless the request is made for the purpose of avoiding the application of this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

b. Any extraordinary physical, mental, or emotional health needs of the Indian child requiring highly specialized treatment services as established by the testimony of an expert witness, including a qualified expert witness. The length of time that an Indian child has been in a placement does not, in itself, constitute an extraordinary emotional health need.

c. The unavailability of a suitable placement for the Indian child after diligent efforts have been made to place the Indian child in the order of preference under par. (a), (b), or (c).

2. The burden of establishing good cause to depart from the order of placement preference under par. (a), (b), or (c) shall be on the party requesting that departure.

(i) Report of placement. The department, a county department, or a child welfare agency shall maintain a record of each adoptive placement, out-of-home care placement, and preadoption placement made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian child’s tribe.

(8) RETURN OF CUSTODY. (a) Adoption vacated, set aside, or terminated. If a final order granting adoption of an Indian child is vacated or set aside or if the parental rights to an Indian child of all adoptive parents of the Indian child are voluntarily terminated, the Indian child’s former parent or former Indian custodian may petition for the return of custody of the Indian child. On receipt of a return of custody petition, the court shall set a date for a hearing on the petition that allows reasonable time for the parties to prepare. The court shall provide notice of the hearing to the guardian and legal custodian of the Indian child, to all other interested parties as provided in s. 48.27 (6), and to the Indian child’s former parent and former Indian custodian. At the conclusion of the hearing, the court shall grant a petition for the return of custody of the Indian child to the Indian child’s former parent or former Indian custodian that there is a showing that return of custody is not in the best interests of the Indian child.

(b) Removal from out-of-home care placement. If an Indian child is removed from an out-of-home care placement for the purpose of placing the Indian child in another out-of-home care placement, a preadoption placement, or an adoptive placement, the placement shall be made in accordance with this section.

(9) ADOPTEE INFORMATION. (a) Provision of information to U.S. secretary of the interior. At the time a court enters an order granting adoption of an Indian child, the court shall provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with all of the following information:

1. The name and tribal affiliation of the Indian child.
2. The names and addresses of the Indian child’s birth parents.
3. The names and addresses of the Indian child’s adoptive parents.
4. The identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child.

(b) Confidentiality of parent’s identity. The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent wishes the U.S. secretary of the interior to maintain the confidentiality of the birth parent’s identity. If the birth parent files that affidavit, the court shall include the affidavit with the information provided to the U.S. secretary of the interior under par. (a) and that secretary shall maintain the confidentiality of the birth parent’s identity as required under 25 USC 1951 (a) and (b).

(c) Provision of tribal affiliation to adoptee. At the request of an Indian adoptee who is 18 years of age or older, the court that entered the order granting adoption of the adoptee shall provide or arrange to provide the adoptee with the tribal affiliation, if any, of the adoptee’s birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

(10) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1901 to 1963, supersedes this chapter in any Indian child custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian child’s parent or Indian custodian than the rights provided under that act, the court shall apply the standard under this chapter.

History: 1981 c. 81; 2009 a. 94; 2011 a. 87.

When the children’s code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In Re Interest of D.S.P. 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

48.029 Pregnancy testing prohibited. No law enforcement agency, district attorney, corporation counsel, county department, licensed child welfare agency or other person involved in the investigation or prosecution of an allegation that an unborn child has been the victim of or is at substantial risk of abuse may, without a court order, require a person to take a pregnancy test in connection with that investigation or prosecution.

History: 1997 a. 292.

SUBCHAPTER II

ORGANIZATION OF COURT

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

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 938, another judge shall be assigned under s. 753.073. When the children’s code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In Re Interest of D.S.P. 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

48.035 Court; Menominee and Shawano counties. Menominee County is attached to Shawano County for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and ch. 938 and the office and functions of the judge of the court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee County and Shawano County shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors of Menominee County may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief
48.04 Employees of court. If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board of supervisors determines.


48.06 Services for court. (1) Counties with a population of 500,000 or more. (a) 1. In counties with a population of 500,000 or more, the department shall provide the court with the services necessary for investigating and supervising child welfare and unborn child welfare cases under this chapter. The department is charged with providing child welfare and unborn child welfare intake and dispositional services and with administration of the personnel and services of the child welfare and unborn child welfare intake and dispositional sections of the department. The department shall include investigative services for all children and unborn children alleged to be in need of protection or services to be provided by the department.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for child welfare matters under this chapter and the department shall be charged with executing the judicial policy. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court.

3. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case, child, unborn child or expectant mother of an unborn child after a written order is made under s. 48.21 or 48.213 or if a petition is filed under s. 48.25.

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

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

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

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

3. Intake services. The court, the department in a county having a population of 500,000 or more or the county department responsible for providing intake services under s. 48.067 shall specify one or more persons to provide intake services. If there is more than one such worker, one of the workers shall be designated as chief worker and shall supervise other workers.

4. State aid. State aid to any county for court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 48.569. Counties having a population of less than 500,000 may use funds received under s. 48.569 (1) (d), including county or federal revenue sharing funds allocated to match funds received under s. 48.569 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court attached intake services or $30,000 per county per calendar year, whichever is less.


Cross-reference: See also ch. DCF 49, Wis. adm. code.

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

1. Provide intake services 24 hours a day, 7 days a week, for the purpose of screening children taken into custody and not released under s. 48.20 (2) and the adult expectant mothers of unborn children taken into custody and not released under s. 48.203 (1).

2. Interview, unless impossible, any child or expectant mother of an unborn child who is taken into physical custody and not released, and when appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. If an adult expectant mother of an unborn child cannot be interviewed, the intake worker shall consult with an adult relative or friend of the adult expectant mother. No child may be placed in a juvenile detention facility unless the child has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.
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(3) Determine whether the child or the expectant mother of an unborn child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2).

(4) If the child or the expectant mother of an unborn child is not released, determine where the child or expectant mother shall be held.

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

(6) Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into informal dispositions under policies promulgated under s. 48.06 (1) or (2).

(6m) Conduct the multidisciplinary screen in counties that have an alcohol and other drug abuse program under s. 48.547.

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

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

(8) Make interim recommendations to the court concerning children, and unborn children and their expectant mothers, awaiting final disposition under s. 48.355.

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


48.069 Powers and duties of disposition staff. (1) The staff of the department, the court, a county department or a licensed child welfare agency designated by the court to carry out the objectives and provisions of this chapter, or, in a county having a population of 500,000 or more, the department or an agency under contract with the department to provide disposition services, shall:

(a) Supervise and assist a child and the child’s family or the expectant mother of an unborn child pursuant to informal dispositions, a consent decree or order of the court.

(b) Offer individual and family counseling.

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

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

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

(2) Except in a county having a population of 500,000 or more, licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested. In a county having a population of 500,000 or more, the department or, with the approval of the department, a licensed child welfare agency shall provide services under this section.

(3) A court or county department responsible for disposition staff or, in a county having a population of 500,000 or more, the department may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

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


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

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

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

(4) COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES. Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a child if special treatment or care has been ordered under s. 48.345 (6) and if s. 48.362 (4) applies or to provide special treatment or care to the expectant mother of an unborn child if special treatment or care has been ordered under s. 48.347 (4) and if s. 48.362 (4) applies.

(5) COURT−APPOINTED SPECIAL ADVOCATE PROGRAM. (a) Memorandum of understanding. The court may obtain the services of a court−appointed special advocate program that has been recognized by the chief judge of the judicial administrative district. A chief judge of a judicial administrative district may recognize a court−appointed special advocate program by entering into a memorandum of understanding with the court−appointed special advocate program that specifies the responsibilities of the court−appointed special advocate program and of a court−appointed special advocate designated under s. 48.236 (1). The memorandum of understanding shall specify that the court−appointed special advocate program is responsible for selecting, training, supervising and evaluating the volunteers and employees of the program who are authorized to provide court−appointed special advocate services as provided in pars. (b) to (d), that, in addition to any other activities specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court−appointed special advocate services may be designated to perform any of the activities specified in s. 48.236 (3) (a) to (c) and that, in addition to any other authority specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court−appointed special advocate services may be authorized to exercise any of the authority specified in s. 48.236 (4) (a) and (b), unless the parties to the memorandum of understanding determine that a variance from the requirements of pars. (b) to (d), the activities specified in s. 48.236 (3) (a) to (c) or the authority specified in s. 48.236 (4) (a) and (b) is necessary for the efficient administration of the program.

(b) Selection. 1. A court−appointed special advocate program may select a person to provide court−appointed special advocate services if the person is 21 years of age or older, demonstrates an interest in the welfare of children, undergoes a satisfactory background investigation as provided under subd. 2., completes the training required under par. (c) and meets any other qualifications required by the court−appointed special advocate program. A court−appointed special advocate program may refuse to permit to provide court−appointed special advocate services any person whose provision of those services might pose a risk, as determined by the court−appointed special advocate program, to the safety of any child.

2. On receipt of an application from a prospective court−appointed special advocate, the court−appointed special advocate...
program, with the assistance of the department of justice, shall conduct a background investigation of the applicant. If the court-appointed special advocate program determines that any information obtained as a result of the background investigation provides a reasonable basis for further investigation, the court-appointed special advocate program may also require the applicant to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identification of the applicant and obtaining the applicant's criminal arrest and conviction record. The court-appointed special advocate program shall keep confidential all information received from the department of justice and the federal bureau of investigation under this subdivision.

(c) Training. A court-appointed special advocate program shall require a volunteer or employee of the program selected under par. (b) to complete a training program before the volunteer or employee may be designated as a court-appointed special advocate under s. 48.236 (1). The training program shall include instruction on recognizing child abuse and neglect, cultural competency, as defined in s. 48.982 (1) (b)(m), child development, the proceedings of the court, permanency planning, the activities of a court-appointed special advocate under s. 48.236 (3) and information gathering and documentation, and shall include observation of a proceeding under s. 48.13. A court-appointed special advocate program shall also require each volunteer and employee of the program selected under par. (b) to complete continuing training annually.

(d) Supervision and evaluation. The supervisory support staff of a court-appointed special advocate program shall be easily accessible to the volunteers and employees of the program who are authorized to provide court-appointed special advocate services, shall hold regular case conferences with those volunteers and employees to review case progress and shall conduct annual performance evaluations of those volunteers and employees. A court-appointed special advocate program shall provide its staff and volunteers with written guidelines describing the policies, practices and procedures of the program and the responsibilities of a volunteer or employee of the program who is authorized to provide court-appointed special advocate services.

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

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

(3) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 or 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking the expectant mother of an unborn child into physical custody when the expectant mother comes voluntarily or when there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.


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

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

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

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


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


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

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

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

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

History: 1977 c. 449.

48.13 Jurisdiction over children alleged to be in need of protection or services. Except as provided in s. 48.028 (3), 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), (f), or (g), 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), (f), or (g), 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...
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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 court 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), if 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.

48.14 Jurisdiction over other matters relating to children. Except as provided in s. 48.028 (3), the court has exclusive jurisdiction over:

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

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

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

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

(3) The adoption of children.

(4) Proceedings under chs. 51 and 55 which apply to minors and proceedings under ch. 51 which apply to the adult expectant mothers of unborn children, if those adult expectant mothers appear to be drug dependent or to suffer from alcoholism.

(5) Consent to marry under s. 765.02.

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

(7) Granting visitation privileges under s. 54.56.

(8) Proceedings under s. 48.028 (8) for the return of custody of an Indian child to his or her former parent, as defined in s. 48.028 (2) (c), or former Indian custodian, as defined in s. 48.028 (2) (b), following a vacation or setting aside of an order granting adoption of the Indian child or following an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child.

History:

If two actions between the same parties, on the same subject, to test the same rights are brought in different courts with concurrent jurisdiction, it is error for the second court to assume jurisdiction. Interest of Tiffany W. & Myokra W. 192 Wis. 2d 407, 532 N.W.2d 135 (Ct. App. 1995).

The court has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

History: 1997 a. 292.

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

(2) Except as provided in ss. 48.19 to 48.21 and s. 48.345 (14), if 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.

48.14 Jurisdiction over other matters relating to children. Except as provided in s. 48.028 (3), the court has exclusive jurisdiction over:

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

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

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

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

(3) The adoption of children.

(4) Proceedings under chs. 51 and 55 which apply to minors and proceedings under ch. 51 which apply to the adult expectant mothers of unborn children, if those adult expectant mothers appear to be drug dependent or to suffer from alcoholism.

(5) Consent to marry under s. 765.02.

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

(7) Granting visitation privileges under s. 54.56.

(8) Proceedings under s. 48.028 (8) for the return of custody of an Indian child to his or her former parent, as defined in s. 48.028 (2) (c), or former Indian custodian, as defined in s. 48.028 (2) (b), following a vacation or setting aside of an order granting adoption of the Indian child or following an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child.


If two actions between the same parties, on the same subject, to test the same rights are brought in different courts with concurrent jurisdiction, it is error for the second court to assume jurisdiction. Interest of Tiffany W. & Myokra W. 192 Wis. 2d 407, 532 N.W.2d 135 (Ct. App. 1995).

The court has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

History: 1997 a. 292.
48.15 Jurisdiction of other courts to determine legal custody. Except as provided in s. 48.028 (3), nothing in this chapter deprives another court of the right to determine the legal custody of a child by habeas corpus or to determine the legal custody or guardianship of a child if the legal custody or guardianship is incidental to the determination of an action pending in that court. Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 is paramount in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn children and their expectant mothers alleged to come within the provisions of ss. 48.133 and 48.14 (5).


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

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

History: 1991 a. 263.

48.185 Venue. (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133, 48.135 and 48.14 (1) to (9) may be in any of the following: the county where the child or the expectant mother of the unborn child resides or the county where the child or expectant mother is present. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child’s parent pursuant to a dispositional order, in which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365 or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order, under s. 48.345 or 48.347, shall be in the county where the dispositional order was issued, unless the child’s county of residence has changed, or the parent or the child or the expectant mother of the unborn child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child, parent or expectant mother.


This section does not authorize change of venue, on motion of party or upon stipulation of parties, after adjudication but before the first dispositional hearing. 75 Am. Jur. 2d 100.

SUBCHAPTER IV

HOLDING A CHILD OR AN EXPECTANT MOTHER IN CUSTODY

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

(a) A warrant.

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

(c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the

child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1)

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

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

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

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

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

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

6. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

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

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


A viable fetus is not a “person” within the definition of a child under s. 48.02 (2). A court may not order protective custody of a fetus by requiring custody of the mother. State ex rel. Angela M.W. v. Kruziek, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95–2480.

48.193 Taking an adult expectant mother into custody. (1) An adult expectant mother of an unborn child may be taken into custody under any of the following:

(a) A warrant.

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

(c) An order of the judge if made upon a showing satisfactory to the judge that due to the adult expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the adult expectant mother is taken into custody and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the adult expectant mother be held in custody under s. 48.207 (1m).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists: 
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1. A capias or warrant for the apprehension of the adult expectant mother has been issued in this state or in another state.

2. There is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the adult expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the adult expectant mother is taken into custody.

3. The adult expectant mother has violated the conditions of an order under s. 48.213 (3) or the conditions of an order for temporary physical custody by an intake worker.

(2) When an adult expectant mother of an unborn child is taken into physical custody as provided in this section, the person taking the adult expectant mother into custody shall immediately attempt to notify an adult relative or friend of the adult expectant mother by the most practical means. The person taking the adult expectant mother into custody shall continue such attempt until an adult relative or friend is notified, or the adult expectant mother is delivered to an intake worker under s. 48.203 (2), whichever occurs first. If the adult expectant mother is delivered to the intake worker before an adult relative or friend is notified, the intake worker, or another person at his or her discretion, shall continue the attempt to notify until an adult relative or friend of the adult expectant mother is notified.

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

History: 1997 a. 292.

48.195 Taking a newborn child into custody. (1) TAKING CHILD INTO CUSTODY. In addition to being taken into custody under s. 48.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff’s office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number “911” or, in an area in which the telephone number “911” is not available, the number for an emergency service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment shall have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child; if the child is later adopted.

2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.

3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.

4. An attending physician for purposes of diagnosis and treatment of the child.

5. The child’s foster parent or other person having physical custody of the child.

6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.

7. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the Indian tribe in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

(b) Any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) is immune from any civil liability to the child’s parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child.
child from the child’s parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) RULES. The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child’s parent.

History: 2001 a. 2; 2009 a. 28, 94, 185.

Cross-reference: See also ch. DCF 39, Wis. adm. code.

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

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

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

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

(3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child’s parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2). The person who took the child into custody shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give a copy of the statement to the intake worker and to any child 12 years of age or older. The intake interview is not done in person, the report may be read to the intake worker.

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

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

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

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

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

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

(c) The intake worker may release the child as follows:

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

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

(d) If the child is released from custody, the intake worker shall immediately notify the child’s parent, guardian, legal custodian, and Indian custodian of the reasons for holding the child in custody and of the child’s whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian, legal custodian, and Indian custodian shall be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian, legal custodian, or Indian custodian. The intake worker shall notify both the child and the child’s parent, guardian, legal custodian, or Indian custodian.

(b) If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child’s guardian ad litem, shall receive the same notice about the whereabouts of the child expectant mother, about the reasons for holding the child expectant mother in custody and about the detention hearing as the child expectant mother and her parent, guardian, legal custodian, or Indian custodian. The intake worker shall notify the child expectant mother, her parent, guardian, legal custodian, or Indian custodian and the unborn child, by the unborn child’s guardian ad litem.


48.203 Release or delivery of adult expectant mother from custody. (1) A person taking an adult expectant mother of an unborn child into custody shall make every effort to release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant

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mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the person taking the adult expectant mother into custody may release the adult expectant mother under the adult expectant mother’s own supervision after counseling or warning the adult expectant mother as may be appropriate.

(2) If the adult expectant mother is not released under sub. (1), the person who took the adult expectant mother into custody shall arrange in a manner determined by the court and law enforcement agencies for the adult expectant mother to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the adult expectant mother was taken into physical custody and shall give the adult expectant mother a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

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

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

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

(6) (a) When an adult expectant mother is interviewed by an intake worker, the intake worker shall inform the adult expectant mother of her right to counsel.

(b) The intake worker shall review the need to hold the adult expectant mother in custody and shall make every effort to release the adult expectant mother from custody as provided in par. (c).

The intake worker shall base his or her decision as to whether to release the adult expectant mother or to continue to hold the adult expectant mother in custody on the criteria specified in s. 48.205 (1m) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the intake worker may release the adult expectant mother under the adult expectant mother’s own supervision after counseling or warning the adult expectant mother as may be appropriate.

(7) If an adult expectant mother is held in custody, the intake worker shall notify the adult expectant mother and the unborn child, through the unborn child’s guardian ad litem, of the reasons for holding the adult expectant mother in custody, the time and place of the detention hearing required under s. 48.213, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing.

History: 1997 a. 292.

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

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

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

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

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

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


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

Courts may hold juveniles in contempt of court, but only under the criteria under this section and s. 48.208. 70 Atty. Gen. 98.

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

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian 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, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The
person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree or second-degree intentional homicide, or under s. 940.05 of the second-degree or first-degree intentional homicide. A parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a license under s. 48.62 refused, revoked, or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician’s office if the child is held under s. 48.20 (4) or (4m).

(h) A place listed in s. 51.15 (2) if the child is held under s. 48.20 (5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).

(k) A facility under s. 48.58.

(1g) An Indian child held in physical custody under s. 48.205 (1) shall be placed in compliance with s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the person responsible for determining the placement finds good cause, as described in s. 48.028 (7) (e), for departing from the order of placement preference under s. 48.028 (7) (b) or finding that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian child shall be placed in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c).

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.33 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician’s office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

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

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

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


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

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

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.


Counties may hold juveniles in contempt of court, but only under the criteria under s. 48.205 and this section. 70 Atty. Gen. 98.

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

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

(a) The jail meets the standards for juvenile detention facilities established by the department of corrections;

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

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

(d) Adequate supervision is provided; and

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

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


Cross-reference: See also s. DOC 346.01, Wis. adm. code.

48.21 Hearing for child in custody. (1) HEARING; WHEN HELD. (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit court commissioner within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and legal holidays. By the time of the hearing a petition under s. 48.23 shall be filed, except that no petition need be filed when the child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. when the child is a runaway from another state, in which case a written statement of the reasons for holding the child in custody shall be substituted if the peti
tion is not filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays, and legal holidays, or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in pars. (b) and (bm). A parent not present at the hearing shall be granted a rehearing upon request for good cause shown.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or circuit court commissioner for an additional 72 hours from the time of the hearing, excluding Saturdays, Sundays, and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe any of the following:

1. That additional time is required to determine whether the filing of a petition initiating proceedings under this chapter is necessary.
2. That the child is an imminent danger to himself or herself or to others.
3. That probable cause exists to believe that the parent, guardian, or legal custodian of the child or other responsible adult is neglecting, refusing, unavailable, or unavailable to provide adequate supervision and care.
4. That, if the child is an expectant mother who was taken into custody under s. 48.19 (1) (cm) or (d) 8., probable cause exists to believe that there is a substantial risk that if the child expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree, and to believe that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(bm) An extension under par. (b) may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in par. (b), the judge or circuit court commissioner shall order the child’s immediate release from custody.

(3) PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES AND UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR CHILD EXPECTANT MOTHERS. (ag) Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 or an unborn child and a child expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsec.

(am) The parent, guardian, legal custodian, or Indian custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the child if he or she is 12 years of age or older, before the hearing begins. If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., a copy of the petition shall also be given to the unborn child, through the unborn child’s guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the child’s parent, guardian, legal custodian, and Indian custodian, to the child if he or she is 12 years of age or older and, if the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn child, through the unborn child’s guardian ad litem, under s. 48.20 (8).

(d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross-examine witnesses, and, in the case of a parent or Indian custodian of an Indian child who is the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right to counsel under s. 48.028 (4) (b).

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

(f) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the child or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the child. If the parent does not provide that information at the hearing, the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under the custody order shall permit the parent to provide the information at a later date.

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

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

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

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

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

(b) An order relating to a child held in custody outside of his or her home shall also include all of the following: 1. a. A finding that continued placement of the child in his or her home would be contrary to the welfare of the child.

b. A finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while ensuring that the child’s health and safety are the paramount concerns, unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

c. A finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to make it possible for the child to return safely home.

d. If the child is under the supervision of the county department or, in a county having a population of 500,000 or more, the
court commissioner determines that such visitation or interaction as to whether the intake worker has made reasonable efforts to place the child in a placement that enables the sibling group to receive services to the child under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the judge or circuit court commissioner determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

3. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.38 (4) (b) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the judge or circuit court commissioner determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the judge or circuit court commissioner shall order the county department, department in a county having a population of 500,000 or more, to provide additional services and supports that are available for children placed in a foster home or in the home of a person receiving those payments.

4. The period under sub. (1) (a) runs from the time the intake worker decides to hold the child or other relative to the date on which the order is granted.

5. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the best interests of the unborn child and the public are served, he or she may incur additional expenses if the child is placed in his or her home and that reimbursement for some of those expenses may be available.

e. The name and contact information of the agency that removed the child from the custody of the child’s parent.

f. A statement that the person provided with the notice has been served or, in the case of a child expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., that the best interests of the unborn child and the public are served, he or she may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.


The period under sub. (1) (a) runs from the time the intake worker decides to hold the child. Curtis W. v. State, 192 Wis. 2d 719, 531 N.W.2d 633 (Ct. App. 1995).
when an adult expectant mother is taken into custody under s. 48.193 (1) (b) or (d) 1. or 3., in which case a written statement of the reasons for holding the adult expectant mother in custody shall be substituted if the petition is not filed. If no hearing has been held within those 48 hours, excluding Saturdays, Sundays and legal holidays, or if no petition or statement has been filed at the time of the hearing, the adult expectant mother shall be released except as provided in par. (b).

(b) If no petition has been filed by the time of the hearing, an adult expectant mother of an unborn child may be held in custody with the approval of the judge or circuit court commissioner for an additional 72 hours after the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that there is a substantial risk that if the adult expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother’s habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the adult expectant mother’s immediate release from custody.

(2) PROCEEDINGS CONCERNING UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR ADULT EXPECTANT MOTHERS:

(a) Proceedings concerning an unborn child and an adult expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(b) The adult expectant mother may waive the hearing under this section. After any waiver, a hearing shall be granted at the request of any interested party.

(c) A copy of the petition shall be given to the adult expectant mother, and to the unborn child, through the unborn child’s guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the adult expectant mother and unborn child in accordance with s. 48.203 (7).

(d) Prior to the commencement of the hearing, the adult expectant mother and the unborn child, through the unborn child’s guardian ad litem, shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

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

(3) CONTINUATION OF CUSTODY: If the judge or circuit court commissioner finds that the adult expectant mother should be continued in custody under the criteria of s. 48.205 (1m), the judge or circuit court commissioner shall enter one of the following orders:

(a) Release the adult expectant mother and impose reasonable restrictions on the adult expectant mother’s travel, association with other persons or places of abode during the period of the order, including a condition requiring the adult expectant mother to return to other custody as requested; or subject the adult expectant mother to the supervision of an agency agreeing to supervise the adult expectant mother. Reasonable restrictions may be placed upon the conduct of the adult expectant mother which may be necessary to ensure the safety of the unborn child and of the child when born.

(b) Order the adult expectant mother to be held in an appropriate manner under s. 48.207 (1m).

(4) ORDERS IN WRITING: All orders to hold an adult expectant mother of an unborn child in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(5) AMENDMENT OF ORDER: An order under sub. (3) (a) imposing restrictions on an adult expectant mother of an unborn child may at any time be amended, with notice, so as to place the adult expectant mother in another form of custody for failure of the adult expectant mother to conform to the conditions originally imposed.

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


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


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

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

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

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

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.13 to 48.14, excluding s.
48.23 Right to counsel. (1g) Definition. In this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding.

(1m) Right of children to legal representation. Children subject to proceedings under this chapter shall be afforded legal representation as follows:

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

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

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

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

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

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

(2g) Right of Indian child’s parent or Indian custodian to counsel. Whenever an Indian child is the subject of a proceeding involving the removal of the Indian child from the home of his or her parent or Indian custodian, placement of the Indian child in an out-of-home care placement, or termination of parental rights to the Indian child, the Indian child’s parent or Indian custodian shall have the right to be represented by counsel as provided in subs. (2) and (4).

(2m) Right of expectant mother to counsel. (a) When an unborn child is alleged to be in need of protection or services under s. 48.133, the expectant mother of the unborn child, if the expectant mother is a child, shall be represented by counsel and may not waive counsel.

(b) If a petition under s. 48.133 is contested, no expectant mother may be placed outside of her home unless the expectant mother is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the expectant mother may not be placed outside of her home unless the expectant mother is represented by counsel at the hearing at which the placement is made. An adult expectant mother, however, may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court may place the adult expectant mother outside of her home even though the adult expectant mother was not represented by counsel.

(c) For an expectant mother under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(3) Power of the court to appoint counsel. Except in proceedings under s. 48.13, at any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. Except as provided in sub. (2g), the court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.

(3m) Guardians ad litem or counsel for abused or neglected children. The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child may not act as counsel for any other party or any governmental or social agency involved in the proceeding and may not act as court-appointed special advocate for the child in the proceeding.

(4) Providing counsel. If a child has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral.

Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2), (2g), or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer...
the parent or adult expectant mother to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person’s ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

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


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

The court erred by failing to inform the parents of their right to a jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 345 N.W.2d 410 (1984).

Neither a temporary custody order nor a custodial interlocutory were proceedings were sub. (1) (a) [now (1m) (a)]. State v. Woods, 117 Wis. 2d 701, 345 N.W.2d 457 (1984).

When a party to a CHIPS action is represented by both adversary counsel and a GAL, adversary counsel must be allowed to zealously represent the client’s expressed wishes, and if the GAL holds an opposing view. In Interest of T.L. 151 Wis. 2d 723, 445 N.W.2d 729 (Ct. App. 1989).

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D.S., 168 Wis. 2d 996, 483 N.W.2d 52 (1992).

The prohibition in sub. (3) against appointing counsel for a party other than the child is unconstitutional. Jom B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), 95–2757.

Sub. (4) does not say in cases other than those under s. 48.375 that appointment of counsel does not continue after an appeal has been filed. Section 809.85 provides otherwise. Juneau County Department of Human Services v. James B. 2000 WI App 86, 234 Wis. 2d 406, 610 N.W.2d 144, 99–1700.

Under juvenile courts have discretionary authority to appoint counsel for parents in CHIPS cases. When a parent requests counsel or when circumstances raise a reasonable concern that the parent will not be able to provide meaningful self-representation, the court must exercise that discretion. State v. Tammy L.D. 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894, 99–1962.

Self-representation competency standards developed in criminal cases apply to parents in termination of parental rights actions. When a defendant seeks self-representation, the circuit court must insure that the defendant 1) has knowingly, intelligently, and voluntarily waived the right to counsel, and 2) is competent to so proceed. The determination of self-representation competency requires an assessment of whether a person is able to provide himself or herself with meaningful self-representation. Dane County DHS v. Susan P. 2006 WI App 100, 293 Wis. 2d 279, 715 N.W.2d 692, 05–3155.

This section does not provide a right to counsel only for parents who appear in person. No statutory provision deprives a parent’s counsel from presenting evidence and arguing at a termination proceeding when the parent has appeared, but not in person. A mother maintained her statutory right to counsel throughout a termination proceeding after the circuit court found her in default for failing to obey the court’s order to personal appearance. It was prejudicial error to dismiss the mother’s action from the proceedings and to prevent counsel from participating in the proceeding. State v. Shirley E. 2006 WI 129, 298 Wis. 2d 1, 742 N.W.2d 623, 05–2752.

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

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

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

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

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommenda- tion has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services.

(g) The court shall appoint a guardian ad litem for a parent who is the subject of a termination of parental rights proceeding, if any assessment or examination of a parent that is ordered under s. 48.295 (1) shows that the parent is not competent to participate in the proceeding or to assist his or her counsel or the court in protecting the parent’s rights in the proceeding.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel or court-appointed special advocate in a proceeding on behalf of any party or who is a relative or representative of an interested party in a proposed proceeding may be appointed guardian ad litem in that proceeding.

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

(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. 48.13 or for an unborn child who is the subject of a proceeding under s. 48.133 shall do all of the following:

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

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

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

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

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

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

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

5. Petition for extension of dispositional orders under s. 48.565.

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

7. Petition for relief from a judgment terminating parental rights under s. 48.028 or 48.46.

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

7m. Bring an action or motion for the determination of the child’s paternity under s. 767.80.

8. Perform any other duties consistent with this chapter.
(b) The court shall order the agency identified under s. 48.33 (1) (c) as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

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

1. Participate in permanency planning under ss. 48.38 and 48.43 (5) after the child is born.
2. Petition for a change in placement under s. 48.357.
3. Petition for termination of parental rights or any other matter specified under s. 48.14 after the child is born.
4. Petition for revision of dispositional orders under s. 48.363.
5. Petition for extension of dispositional orders under s. 48.365.
6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125 after the child is born.
7. Petition for relief from a judgment terminating parental rights under s. 48.028 or 48.46 after the child is born.
8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.33 (1) (c) as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

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

(5m) MATTERS INVOLVING CONTESTED TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. (a) In any termination of parental rights proceeding involving a child who has been found to be in need of protection or services and whose parent is contesting the termination of his or her parental rights, a guardian ad litem for a parent who has been appointed under sub. (1) (g) shall provide information to the court relating to the parent’s competency to participate in the proceeding, and shall also provide assistance to the court and the parent’s adversary counsel in protecting the parent’s rights in the proceeding.

(b) The guardian ad litem may not participate in the proceeding as a party, and may not call witnesses, provide opening statements or closing arguments, or participate in any activity at trial that is required to be performed by the parent’s adversary counsel.

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

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

(8) COMPENSATION. (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem under par. (b) or (c) 2. the amount otherwise may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) Subject to par. (c), the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for the expert witness used by the guardian ad litem if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court finds the county of venue to pay because a parent is indigent, the court may order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) 1. In an uncontested termination of parental rights and adoption proceeding under s. 48.833, the court shall order the agency that placed the child for adoption to pay the compensation of the child’s guardian ad litem.

2. In an uncontested termination of parental rights and adoption proceeding under s. 48.835 or 48.837, the court shall order the proposed adoptive parents to pay the compensation of the child’s guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.

(d) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a child under this chapter, the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b) or (c).

(e) If the court orders a parent or proposed adoptive parent to reimburse a county under par. (b) or (c) 2. the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent or proposed adoptive parent who is responsible for the reimbursement.

(f) The court may enforce its orders under this subsection by means of its contempt powers.


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

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

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

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

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

Sub. (4) is designed to suggest the possible duties of a guardian ad litem after a CHIPS order. Continuation of the guardian ad litem is discretionary with the court in such situations, as provided in sub. (7). Sub. (4) specifically permits the continued involvement of the guardian ad litem in permanency planning and in the monitoring of the placement. It also makes it clear that, if it is in the best interests of the child, the guardian ad litem may seek the termination of the parental rights of the parents of the placement. It also makes it clear that, if it is in the best interests of the child, the court may request the designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any records and reports relating to the child who is the subject of the proceeding, the child’s family, and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r., and pupil records under ss. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record in the custody of the custodian of the report or record for such purposes as may be directed by the court.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child’s family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child’s family under a consent decree, dispositional order or permanency plan is providing those services.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) AUTHORITY. A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any records and reports relating to the child who is the subject of the proceeding, the child’s family, and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r., and pupil records under ss. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record in the custody of the custodian of the report or record for such purposes as may be directed by the court.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child’s family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child’s family under a consent decree, dispositional order or permanency plan is providing those services.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) AUTHORITY. A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any records and reports relating to the child who is the subject of the proceeding, the child’s family, and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r., and pupil records under ss. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record in the custody of the custodian of the report or record for such purposes as may be directed by the court.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child’s family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child’s family under a consent decree, dispositional order or permanency plan is providing those services.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) AUTHORITY. A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any records and reports relating to the child who is the subject of the proceeding, the child’s family, and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r., and pupil records under ss. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record in the custody of the custodian of the report or record for such purposes as may be directed by the court.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child’s family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child’s family under a consent decree, dispositional order or permanency plan is providing those services.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) AUTHORITY. A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any records and reports relating to the child who is the subject of the proceeding, the child’s family, and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1) (a), court records under ss. 48.396 (2) (a) and 938.396 (2), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r., and pupil records under ss. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record in the custody of the custodian of the report or record for such purposes as may be directed by the court.
to the proceeding. If a court–appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court–appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(c) Exercise any other authority that is consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

5 IMMUNITY FROM LIABILITY. A volunteer court–appointed special advocate designated under sub. (1) or an employee of a court–appointed special advocate program recognized under s. 48.07 (5) is immune from civil liability for any act or omission of the volunteer or employee occurring while acting within the scope of his or her activities and authority as a volunteer court–appointed special advocate or employee of a court–appointed special advocate program.

History: 1999 a. 149; 2005 a. 344.

SUBCHAPTER V

PROCEDURE

48.24 Receipt of jurisdictional information; intake inquiry.

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

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

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

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

(2m) (a) In counties that have an alcohol and other drug abuse program under s. 48.547, a multidisciplinary screen shall be conducted for:

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

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

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

6. Any expectant mother 12 years of age or over who requests and consents to a multidisciplinary screen.

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

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

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

(5) The intake worker shall request that a petition be filed, enter into an informal disposition, or close the case within 60 days after receipt of referral information. If the referral information is a report received by a 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 under s. 48.981 (3) (a), 125.07, or 125.09, that 60−day period shall begin on the day on which the report is received by the county department, department, or licensed child welfare agency. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel, or other official under s. 48.09 shall receive written notice of that action. If a law enforcement officer has made a recommendation concerning the child, or the unborn child and the expectant mother of the unborn child, the intake worker shall forward this recommendation to the district attorney, corporation counsel, or other official under s. 48.09.

If a petition is filed, the petition may include information received more than 60 days before filing the petition to establish a condition or pattern which, together with information received within the 60−day period, provides a basis for confering jurisdiction on the court. The court shall grant appropriate relief as provided in s. 48.315 (3) with respect to any petition that is not referred or filed within the time periods specified in this subsection. Failure to object to the fact that a petition is not requested within the time period specified in this subsection waives any challenge to the court’s competency to act on the petition.

(6) The intake worker shall perform his or her responsibilities under this section in consultation with the county department or with local agencies that may be relevant.

(5) and triggered the time period for requesting that a petition be filed. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 124 Wis. 2d 516, 756 N.W.2d 573, 08−0147.

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

Subd. (2) (b), (a)’s refusal to cooperate, and a refusal to cooperate cannot be used as evidence supporting a CHIPS petition. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307, 00−1618.

The receipt of a phone message calling a county social service agency’s attention to specific abuse, combined with specific information about the abuse, which the agency labelled a referral, constituted the “receipt of referral information” under sub. (5) and triggered the time period for requesting that a petition be filed. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307, 00−1618.

Section 855.04 (1), the voluntary dismissal statute, does not apply in a CHIPS proceeding because it is different from and inconsistent with sub. (4), which is construed to provide that a district attorney may withdraw a CHIPS petition only with the approval of the court. Kenosha S. v. Circuit Court for Dane County, 2008 WI App 120, 313 Wis. 2d 508, 756 N.W.2d 573, 08−0147.

48.243 Basic rights: duty of intake worker.

Before conferring with the parent, expectant mother or child during the intake inquiry, the intake worker shall personally inform parents, expectant mothers and children 12 years of age or older who are the focus of an inquiry regarding the need for protection or services that the referral may result in a petition to the court and all of the following:

(a) What allegations could be in the petition.

(b) The nature and possible consequences of the proceedings.

(c) The right to remain silent and the fact that silence of any party may be relevant.
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(d) The right to confront and cross-examine those appearing against them.

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

(f) The right to present and subpoena witnesses.

(g) The right to a jury trial.

(h) The right to have the allegations of the petition proved by clear and convincing evidence.

(3) If the child or expectant mother has not had a hearing under s. 48.21 or 48.213 and was not present at an intake conference under s. 48.24, the intake worker shall inform the child, parent, guardian and legal custodian, or expectant mother, as appropriate, of the rights provided under this section. The notice shall be given verbally, either in person or by telephone, and in writing. This notice shall be given so as to allow the child, parent, guardian, legal custodian or adult expectant mother sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

(4) This section does not apply if the child or expectant mother was present at a hearing under s. 48.21 or 48.213.


A CHIPS proceeding is not a criminal proceeding within the meaning of the 5th amendment. Miranda warnings are not required to be given to the CHIPS petition subject, even though the individual is in custody and subject to interrogation, in order for the subject’s statements to be admissible. State v. Thomas J.W. 213 Wis. 2d 364, 570 N.W.2d 586 (Ct. App. 1997), 97–0506.

48.245 Informal disposition. (1) An intake worker may enter into a written agreement with all parties that imposes informal disposition under this section if all of the following apply:

(a) The intake worker has determined that neither the interests of the child or unborn child nor of the public require the filing of a petition for circumstances relating to ss. 48.13 to 48.14.

(b) The facts persuade the intake worker that the jurisdiction of the court, if sought, would exist.

(c) The child, if 12 years of age or over, and the child’s parent, guardian, and legal custodian; the parent, guardian, and legal custodian of the child expectant mother and the child expectant mother, if 12 years of age or over; or the adult expectant mother, consent.

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

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

2. That the child and a parent, guardian and legal custodian abide by such obligations as will tend to ensure the rehabilitation, protection or care of the child or that the expectant mother abide by such obligations as will tend to ensure the protection or care of the unborn child and the rehabilitation of the expectant mother.

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

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

(b) Informal disposition may not include any form of out-of-home placement and may not exceed 6 months, except as provided under subd. (2).
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filed within the time period specified in this subsection. Failure to object to the fact that a petition is not filed within the time period specified in this subsection waives any objection to the court’s competency to act on the petition.

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

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


48.25 Petition: authorization to file. (1) A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. The district attorney, corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is under s. 48.13 or 48.133. The counsel or guardian ad litem for a parent, relative, guardian or child may file a petition under s. 48.13 or 48.14. The counsel or guardian ad litem for an expectant mother or the guardian ad litem for an unborn child may file a petition under s. 48.133. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court.

(2) If the proceeding is brought under s. 48.13 or 48.133, the district attorney, corporation counsel, or other appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker’s request was filed. A referral back to intake may be made only when the district attorney, corporation counsel, or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into an informal disposition within 20 days after the date of the referral. If the case is referred back to intake for further investigation, the appropriate agency or person shall complete the investigation within 20 days after the date of the referral. If another referral is made to the district attorney, corporation counsel, or other appropriate official, it shall be considered a new referral to which the time periods of this subsection apply. The time periods in this subsection may only be extended by a court upon a showing of good cause under s. 48.315. If a petition is not filed within the applicable time period set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall grant appropriate relief as provided in s. 48.315 (3) with respect to any petition that is not filed within the applicable time period specified in this subsection. Failure to object to the fact that a petition is not filed within the applicable time period specified in this subsection waives any challenge to the court’s competency to act on the petition.

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

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


“Good cause” under sub. (2) is determined by first considering the best interests of the child. Additional factors are whether: 1) the party seeking the enlargement of time has acted in good faith; 2) the opposing party is not prejudiced; and 3) the dilatory party took prompt action to remedy the situation. In interest of F. E. W. 143 Wis. 2d 156, 322 N.W.2d 893 (Ct. App. 1988).

In a case referred by the district attorney of one county to another county, each district attorney had 20 days under sub. (2) to act following the respective referrals by the intake workers of each county. State v. Evrett, 231 Wis. 2d 616, 605 N.W.2d 635 (Ct. App. 1999), 98–3444.

48.255 Petition: form and content. (1) A petition initiating proceedings under this chapter, other than a petition under s. 48.133, shall be entitled, “In the interest of (child’s name), a person under the age of 18” and shall set forth with specificity:

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

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

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

(cm) Whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to that act, the names and addresses of the child’s Indian custodian, if any, and Indian tribe, if known.

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

(f) If the child is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns, and to make it possible for the child to return safely home.

(g) If the petitioners knows or has reason to know that the child is an Indian child, and if the child has been removed from the home of his or her parent or Indian custodian, reliable and credible information showing that continued custody of the child by the child’s parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and reliable and credible information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. The petition shall set forth with specificity both the information required under this paragraph and the information required under par. (f).

(1m) A petition initiating proceedings under s. 48.133 shall be entitled “In the interest of (J. Doe), an unborn child, and (expectant mother’s name), the unborn child’s expectant mother” and shall set forth with specificity:

(a) The estimated gestational age of the unborn child.

(b) The name, birth date and address of the expectant mother.
(bm) The names and addresses of the parent, guardian, legal custodian or spouse, if any, of the expectant mother, if the expectant mother is a child, the name and address of the spouse, if any, of the expectant mother, if the expectant mother is an adult, or, if no such person can be identified, the name and address of the nearest relative of the expectant mother.

(c) Whether the expectant mother is in custody and, if so, the place where the expectant mother is being held and the time when the expectant mother was taken into custody unless there is a reasonable cause to believe that disclosure of that information would result in imminent danger to the unborn child, expectant mother or physical custodian.

(d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the unborn child may be subject to that act, the name and address of the Indian tribe in which the unborn child may be eligible for affinity when born, if known.

(e) Reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court under s. 48.133 and to provide reasonable notice of the conduct or circumstances to be considered by the court, together with a statement that the unborn child is in need of protection or care and that the expectant mother is in need of supervision, services, care or rehabilitation.

(f) If the expectant mother is a child and the child expectant mother is being held in custody outside of her home, reliable and credible information showing that continued placement of the child expectant mother in her home would be contrary to the welfare of the child expectant mother and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made reasonable efforts to prevent the removal of the child expectant mother from the home, while assuring that the child expectant mother’s health and safety are the paramount concerns, and to make it possible for the child expectant mother to return safety home.

(g) If the petitioner knows or has reason to know that the expectant mother is an Indian child, and if the child expectant mother has been removed from the home of her parent or Indian custodian, reliable and credible information showing that continued custody of the child expectant mother by her parent or Indian custodian is likely to result in serious emotional or physical damage to the child expectant mother under s. 48.028 (4) (d) 1. and reliable and credible information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. The petition shall set forth with specificity both the information required under this paragraph and the information required under par. (f).

(2) If any of the facts required under sub. (1) (a) to (cm), (f), and (g) or (1m) (a) to (d), (f), and (g) are not known or cannot be ascertained by the petitioner, the petition shall so state.

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

(4) A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child’s guardian ad litem or to the adult expectant mother, the unborn child through the unborn child’s guardian ad litem and the physical custodian of the expectant mother, if any. If the child is an Indian child who has been removed from the home of his or her parent or Indian custodian or the unborn child will be an Indian child when born, a copy of a petition under sub. (1) or (1m) shall also be given to the Indian child’s Indian custodian and tribe or the Indian tribe with which the unborn child may be eligible for affinity when born.

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


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

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

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

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

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

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

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

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

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

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

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

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

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

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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
48.27 Notice; summons. (1) (a) After a petition has been filed relating to facts concerning a situation specified under s. 48.13 or a situation specified in s. 48.133 involving an expectant mother who is a child, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the person who has legal custody of the child to appear personally, and, if the court so orders, to bring the child before the court at a time and place stated.

(b) After a petition has been filed relating to facts concerning a situation specified under s. 48.133 involving an expectant mother who is an adult, unless the adult expectant mother voluntarily appears, the court may issue a summons requiring the adult expectant mother to appear personally before the court at a time and place stated.

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

(3) (a) If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian, and legal custodian of the child, any foster parent or other physical custodian described in s. 48.62 (2) of the child, the unborn child by the unborn child’s guardian ad litem, if applicable, and any person specified in par. (b), (d), or (e), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the expectant mother and her counsel and the unborn child through the unborn child’s guardian ad litem. The first notice to any interested party shall be in writing and may have a copy of the petition attached to it. Notice of subsequent hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

1m. The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. If the petition that was filed relates to facts concerning a situation under s. 48.133 involving an expectant mother who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian, and legal custodian of the child, any foster parent or other physical custodian described in s. 48.62 (2) of the child, the unborn child by the unborn child’s guardian ad litem, if applicable, and any person specified in par. (b), (d), or (e), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the expectant mother and her counsel and the unborn child through the unborn child’s guardian ad litem. The first notice to any interested party shall be in writing and may have a copy of the petition attached to it. Notice of subsequent hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

2. If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall notify, under s. 48.273, the all of the following persons:

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

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

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

(c) If the petition that was filed relates to facts concerning a situation under s. 48.133 involving an expectant mother who is an adult, the court shall notify, under s. 48.273, the unborn child by the unborn child’s guardian ad litem, the expectant mother, the physical custodian of the expectant mother, if any, and any person specified in par. (d), if applicable, of all hearings involving the unborn child and expectant mother except hearings on motions for which notice need only be provided to the expectant mother and her counsel and the unborn child through the unborn child’s guardian ad litem. The first notice to any interested party shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(d) If the petition that was filed relates to facts concerning a situation under s. 48.13 or 48.133 involving an Indian child who has been removed from the home of his or her parent or Indian custodian or a situation under s. 48.133 involving an unborn child who, when born, will be an Indian child, the court shall notify, under s. 48.273, the Indian child’s Indian custodian and tribe or the Indian tribe with which the unborn child may be eligible for affiliation when born and that Indian custodian or tribe may intervene at any point in the proceeding.

(e) If the petition that was filed relates to facts concerning a situation under s. 48.13, the court shall also notify, under s. 48.273, the court-appointed special advocate for the child of all hearings involving the child.

(f) A court is not required to provide notice, under subd. 1., to any person who has filed a declaration of paternality interest under s. 48.025, or to any person who has acknowledged paternity of the child under s. 767.805 (1), or any person who has been adjudged to be the father of the child in a judicial proceeding unless the person’s parental rights have been terminated.

(g) If the petition that was filed relates to facts concerning a situation under s. 48.13, any person who has acknowledged paternity of the child under s. 767.805 (1), or any person who has been adjudged to be the father of the child in a judicial proceeding unless the person’s parental rights have been terminated.

(h) If the petition that was filed relates to facts concerning a situation under s. 48.13, any person who has acknowledged paternity of the child under s. 767.805 (1), or any person who has been adjudged to be the father of the child in a judicial proceeding unless the person’s parental rights have been terminated.
guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the child, as provided under s. 48.275 (2).

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


48.273 Service of summons or notice; expense. (1) Except as provided in pars. (ag), (ar), and (b), service of summons or notice required by s. 48.27 may be made by mailing a copy of the summons or notice to the person summoned or notified.

(a) In a situation described in s. 48.27 (3) (d) involving an Indian child, service of summons or notice required by s. 48.27 to the Indian child’s parent, Indian custodian, or tribe shall be made as provided in s. 48.028 (4) (a).

(b) Except as provided in par. (b), if the person fails to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted and service shall be made personally by delivering to the person a copy of the summons or notice; except that if the court determines that it is impracticable to serve the summons or notice personally, the court may order service by certified mail addressed to the last-known address of the person.

(c) Personal service shall be made at least 72 hours before the hearing. Mail shall be sent at least 7 days before the hearing, except as follows:

(1) When the petition is filed under s. 48.13 and the person to be notified lives outside the state, the mail shall be sent at least 14 days before the hearing.

(2) When a petition under s. 48.13 or 48.133 involves an Indian child who has been removed from the home of his or her parent or Indian custodian and the person to be notified is the Indian child’s parent, Indian custodian, or tribe, the mail shall be sent so that it is received by the person to be notified at least 10 days before the hearing or, if the identity or location of the person to be notified cannot be determined, by the U.S. secretary of the interior at least 15 days before the hearing.

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

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

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

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

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

History: 1977 c. 354; 1979 c. 300; 1981 a. 263; 1993 a. 98; 1995 a. 77; 2009 a. 64.

48.275 Parents’ contribution to cost of court and legal services. (1) If the court finds a child to be in need of protection or services under s. 48.13 or an unborn child of an expectant mother who is a child to be in need of protection or services under s. 48.133, the court shall order the parent of the child to contribute toward the expense of post-adjudication services to the child expectant mother and the child when born the proportion of the total amount which the court finds the parent is able to pay. If the court finds an unborn child of an expectant mother who is an adult to be in need of protection or services under s. 48.133, the court shall order the adult expectant mother to contribute toward the expense of post-adjudication services to the adult expectant mother and the child when born the proportion of the total amount which the court finds the adult expectant mother is able to pay.

(2) (a) If this state or a county provides legal counsel to a child who is subject to a proceeding under s. 48.13 or to a child expectant mother who is subject to a proceeding under s. 48.133, the court shall order the child’s parent to reimburse the state or county in accordance with par. (b) or (c). If this state or a county provides legal counsel to an adult expectant mother who is subject to a proceeding under s. 48.133, the court shall order the adult expectant mother to reimburse the state or county in accordance with par. (b) or (c).

(b) If this state provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the child’s parent or the adult expectant mother may request the public defender to determine whether the parent or adult expectant mother is indigent as provided under s. 977.07 and to determine the amount of reimbursement. If the parent or adult expectant mother is found to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent or adult expectant mother is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined in accordance with the rules of the public defender board under s. 977.02 (3).

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

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

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

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

(d) 1. In a county having a population of less than 500,000, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 25% of the amount paid for state-provided counsel in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county-provided counsel in the county treasury.

2. In a county having a population of 500,000 or more, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the secretary of administration, who shall deposit the amount paid in the general fund and credit 25% of the amount paid to the appropriation account under s. 20.437 (1) (gx) and the remainder to the appropriation account under s. 20.550 (1) (L).

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

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

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

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

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


Guardian ad litem fees are not reimbursable under sub. (3) (a) 2. (In). In Interest of G. & L. P. 119 Wis. 2d 349, 349 N.W.2d 743 (Ct. App. 1984).

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

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

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1995).

48.29 Substitution of judge. (1) The child, the child’s parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child’s guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the request. When any person has the right to request a substitution of judge, that person’s counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

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


Sub. (1) permits more than one party to file a request for a substitution of judge in a TPR proceeding. Julie A.B. v. Sheboygan County, 2002 WI App 220, 257 Wis. 2d. 285, 650 N.W.2d 920, 02−1479.

Sub. (1m) is applicable to judicial substitutions in termination of parental rights cases. Brown County Department of Human Services v. Terrance M. 2005 WI App 57, 280 Wis. 2d. 369, 694 N.W.2d 458, 04−2379.

48.293 Discovery. (1) Copies of all law enforcement officer reports, including the officer’s memorandum and witnesses’ statements, shall be made available upon request to counsel or guardian ad litem for any party and to the court-appointed special advocate for the child prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child, or to an unborn child and the unborn child’s expectant mother, which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party and to inspection by the court-appointed special advocate for the child, upon demand and upon presentation of releases when necessary, at least 48 hours before the proceeding. Persons and unborn children, by their guardians ad litem, entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel, a guardian ad litem or a court-appointed special advocate not to disclose specified items in the materials to the child or the parent, or to the expectant mother, if the court reasonably believes that the disclosure would be harmful to the interests of the child or the unborn child.

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

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


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

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2) (a) 2) an inspection request of juvenile records under s. 48.396 (2) and 938.396 (2) or 3) an inspection request of agency records under s. 48.78 (2) (a) and 938.76 (2) (a). The test for discernible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03−3018.

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 a physical, psychological, mental, or developmental 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 by an outpatient or an approved treatment facility for not more than 48 hours pending the filing of a new petition unless a public fact-finding hearing is demanded by the child or the child’s parent or the expectant mother of an unborn child, including motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained and motions challenging the lawfulness of the taking into custody.

If the child or the expectant mother of an unborn child is in custody and the court grants a motion to dismiss based on a defect in the petition or in the institution of the proceedings, the court may order the child or expectant mother to be continued in custody for not more than 48 hours pending the filing of a new petition.

A motion required to be served on a child may be served on the child’s guardian ad litem.

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 examination 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 nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

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 examination 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 nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

Motions or objections under this section may be heard by the court by the date specified in the order. The court shall cause copies to be transmitted 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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

Motions or objections under this section may be heard by the court or 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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

Motions or objections under this section may be heard by the court by the date specified in the order. The court shall cause copies to be transmitted 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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

Motions or objections under this section may be heard by the court or 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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

Motions or objections under this section may be heard by the court or 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 contain a recommendation as to whether the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.
(b) Except as provided in ss. 48.375 (7) (e) and 48.396, any person who divulges any information which would identify the child, the expectant mother or the family involved in any proceeding under this chapter shall be subject to ch. 785.

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

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

(b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child held in custody under s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders or termination of guardianship orders entered under s. 48.977 (4) (b) 2., or (6) or 48.978 (2) (i) 2. or (3) (g). At those hearings, the court shall admit all testimony having reasonable probable value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probable value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e), 48.21 (1) or 48.213 (1) may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

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

(a) The court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.80, of whether an action should be brought for the purpose of determining the paternity of the child.

(b) The state or the attorney responsible for support enforcement who receives a referral under par. (a) shall perform the duties specified under s. 767.80 (5) (c) and (6).

(c) The court having jurisdiction over actions affecting the family shall give priority under s. 767.82 (7m) to an action brought under s. 767.80 whenever the petition filed under s. 767.80 indicates that the matter was referred by the court under par. (a).

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

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

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

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

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

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

(7) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the child and state that he wishes to establish the paternity of the child or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.80, of whether an action should be brought for the purpose of determining the paternity of the child.

(8) As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child’s mother relating to the child’s paternity. A record made under this subsection is admissible in a proceeding to determine the child’s paternity under subch. IX of ch. 767.

(9) If at any point in the proceeding the court determines or has reason to know that the child is an Indian child, the court shall provide notice of the proceeding to the child’s parent, Indian custodian, and tribe in the manner specified in s. 48.028 (4) (a). The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or, if the identity or location of the parent, Indian custodian, [expectant mother,] or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

NOTE: The bracketed language was inadvertently included in 2009 Wis. Act 94. Corrective legislation is pending.

48.30 Plea hearing. (1) Except as provided in s. 48.299 (9), the hearing to determine whether any party wishes to contest an allegation that the child or unborn child is in need of protection or services shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of
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(2) At the commencement of the hearing under this section the child and the parent, guardian, legal custodian, or Indian custodian; the child expectant mother, her parent, guardian, legal custodian, or Indian custodian, and the unborn child through the unborn child’s guardian ad litem; or the adult expectant mother and the unborn child through the unborn child’s guardian ad litem; shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or is waived. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13 or that an unborn child of a child expectant mother is in need of protection or services under s. 48.133, the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition. If a petition alleges that an unborn child of an adult expectant mother is in need of protection or services under s. 48.133, the adult expectant mother of the unborn child shall state whether she desires to contest the petition.

(4) If a petition is not contested, the court, subject to s. 48.299 (9), shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare, but is no more than 30 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody. Subject to s. 48.299 (9), if all parties consent, the court may proceed immediately with the 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 if 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 under s. 49.22 (9) and the manner of its application established by the department under s. 49.345 (14) (c) and listing the factors that a court may consider under s. 49.345 (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.

(5) If the petition is contested, the court, subject to s. 48.299 (9), shall set a date for the fact−finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody.

(6) Before accepting an admission or plea of no contest of the alleged facts in a petition, the court shall:

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

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

(c) Make such inquiries as satisfactorily establishes that there is a factual basis for the plea or admission of the parent and child, of the parent and child expectant mother or of the adult expectant mother.

(d) If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.13 or 48.133, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries set forth in sub. (8).

(7) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.


The time limits under sub. (1) are mandatory. In Interest of Jason J. 176 Wis. 2d 400, 500 N.W.2d 386 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect its competence and warrants reversal only if the juvenile suffers actual prejudice.


48.305 Hearing upon the involuntary removal of a child or expectant mother. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child’s parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. or 9. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall schedule a plea hearing and fact−finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact−finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian, or expectant mother.

History: 1977 c. 354; 1979 c. 300; 1997 a. 292; 2009 a. 94.

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. In the case of a petition to terminate parental rights to an Indian child, “fact−finding hearing” means a hearing to determine if the allegations in the petition, other than the allegations under s. 48.42 (1) (e) relating to serious emotional or physical damage, are proved by clear and convincing evidence if the allegations under s. 48.42 (1) (e) relating to serious emotional or physical damage are proved beyond a reasonable doubt as provided in s. 48.028 (4) (e) 1., unless partial summary judgment on the ground for termination of parental rights is granted.

(2) The hearing shall be to the court unless the child, the child’s parent, guardian, or legal custodian, the unborn child by the unborn child’s guardian ad litem, or the expectant mother or 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 that a deposition be taken by audiovisual means and allow the use of a recorded 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, the child or unborn child is 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 order the 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 determines that 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 unborn 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.

(5) If the child is an Indian child, the court or jury shall also determine at the fact−finding hearing whether continued custody of the child by the Indian child’s parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child under s. 48.028 (4) (d) 1. and whether active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and whether those efforts have proved unsuccessful, unless partial summary judgment on the allegations under s. 48.13 or 48.133 is granted, in which case the court shall make those determinations at the dispositional hearing.

(7) (a) At the close of the fact−finding hearing, the court, subject to s. 48.299 (9), 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 an expectant mother who is not held in secure custody. Subject to s. 48.299 (9), 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 under s. 49.22 (9) and the manner of its application established by the department under s. 49.345 (14) (g) and listing the factors that a court may consider under s. 49.345 (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 50,000 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 50,000 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 50,000 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 50,000 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.


As 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 (Clt. 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, 253 Wis. 2d 563, 643 N.W.2d 890, 01−0248.

Even in civil cases not implicating the fundamental rights of birth−parenthood, a defaulting party may appear at the prove−up hearing and counsel may cross−examine the plaintiffs’ witnesses and present evidence to mitigate or be heard as to the negation of damages. A parent in a termination−of−parental−rights case is entitled to no less, unless, of course the adult parent knowingly waives the right to counsel. State v. Shurtlef E. 2006 WI App 55, 280 Wis. 2d 193, 711 N.W.2d 690/5−2752. Affirmed on other grounds. 2006 WI 129, 298 Wis. 2d 1, 724 N.W.2d 623, 05−2752.

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

(a) Any period of delay resulting from other legal actions concerning the child or the unborn child and the unborn child’s expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child’s parent, guardian or legal custodian or the expectant mother or pre−hearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and his or her counsel or of the unborn child by the unborn child’s guardian ad litem.

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

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

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

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

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

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

(h) Any period of delay resulting from the need to appoint a
qualified interpreter.

(i) A reasonable period of delay, not to exceed 20 days, in a pro-
ceeding involving the out-of-home care placement of or termina-
tion of parental rights to a child whom the court knows or has rea-
son to know is an Indian child, resulting from a continuance
granted at the request of the child’s parent, Indian custodian, or
tribune to enable the reviewer to prepare for the proceeding.

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

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

(2m) No continuance or extension of a time period specified
in this chapter may be granted and no period of delay specified in
sub. (1) or (2) may be excluded in computing a time period under
this chapter if the continuance, extension, or exclusion would result in
any of the following:

(a) The court making an initial finding under s. 48.21 (5) (b)
1. or 1m., 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable
efforts have been made to prevent the removal of the child from
the home, while assuring that the child’s health and safety are the
paramount concerns, or an initial finding under s. 48.21 (5) (b)
3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not
required to be made because a circumstance specified in s. 48.355
(2d) (b) 1. to 5. applies, more than 60 days after the date on which
the child was removed from the home.

(b) The court making an initial finding under s. 48.38 (5m) that
the agency primarily responsible for providing services to the
child has made reasonable efforts to achieve the goals of the
child’s permanency plan more than 12 months after the date on
which the child was removed from the home or making any subse-
quently findings under s. 48.38 (5m) as to reasonable efforts
more than 12 months after the date of a previous finding as to those
reasonable efforts.

(3) Failure by the court or a party to act within any time period
specified in this chapter does not deprive the court of personal or
subject matter jurisdiction or of competency to exercise that juris-
diction. Failure to object to a period of delay or a continuance waives
any challenge to the court’s competency to act during the period of
delay or continuance. If the court or a party does not act
within a time period specified in this chapter, the court, while
assuring the safety of the child, may grant a continuance under
sub. (2), dismiss the proceeding without prejudice, release the
child from secure or nonsecure custody or from the terms of a cus-
tody order, or grant any other relief that the court considers appro-
priate.

History: 1977 c. 354; Sup. Ct. Order. 141 Wis. 2d xiii (1987); 1987 a. 403; 1991

A trial court’s sua sponte adjournment of a fact-finding hearing beyond the 30−day
limit due to a congested calendar constituted good cause under sub. (2) when the
adjournment order was entered within the 30−day period. In Matter of J.R. 152 Wis.
2d 598, 449 N.W.2d 52 (Ct. App. 1989).

The period under sub. (1) (c) includes the time required to assign the new judge,
send any required notices, notify the parties, and arrange for time on the court’s calen-
dar. To avoid any implication of the amount of time needed after the assignment of the
judge. In Interest of Joshua M.W. 179 Wis. 2d 335, 507 N.W.2d 141 (Ct. App. 1993).

Under sub. (2), “on the record” does not require reporting by a court reporter.

The benefits of a pretrial are universally recognized by bench and bar such that a
court need not involve the factors supporting “good cause” for a continuance of the
time limits under sub. (2). Waukesha County v. Darlene R. 201 Wis. 2d 633, 549 N.W.2d
489 (Ct. App. 1996), 95−1697.

NOTE: Subd. 1. c. is shown as affected by 2 acts of the 2009 Wisconsin legisla-
ture and as merged by the legislative reference bureau under s. 139.22 (2) (i). The
comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion
is unnecessary. Corrective legislation is pending.

d. If the child’s placement or other living arrangement is
under the supervision of the county department or, in a county
having a population of 500,000 or more,
the department, an order placing the child into the placement and care responsibi-
}
ment, department in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the judge or circuit court commissioner determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the judge or circuit court commissioner shall order the county department, department, or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the judge or circuit court commissioner determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

2. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge or circuit court commissioner shall make the findings specified in subs. 1. and 2. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the consent decree. A consent decree that merely references—without documenting or referencing that specific information in the consent decree or an amended consent decree that retroactively corrects an earlier consent decree that does not comply with this subdivision is not sufficient to comply with this subdivision.

(c) If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the child.

(d) 1. In the case of an Indian child, if at the time the consent decree is entered into the Indian child is placed outside the home of his or her parent or Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living outside that home without a court order and if the consent decree maintains the Indian child in that placement or other living arrangement, the consent decree shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under par. (b) 1., except that for the sole purpose of determining whether the cost of providing care for an Indian child is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under par. (b) 1. shall be considered to be the same findings.

2. If the placement or other living arrangement under subd. 1. departs from the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), the court shall also find good cause, as described in s. 48.028 (7) (e), for departing from that order.

(1b) The judge or a circuit court commissioner may, as a condition under sub. (1), request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court-appointed special advocate designated under this subdivision shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).
examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan, and, in cases of child abuse or neglect or unborn child abuse, which also includes an assessment of risks to the physical safety and physical health of the child or unborn child and a description of a plan for controlling the risks.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family or for the expectant mother of the unborn child, the persons or agencies that would be primarily responsible for providing those services, the identity of the person or agency that would provide case management or coordination of services, if any, and, in the case of a child adjudged to be in need of protection or services, whether or not the child should receive a coordinated services plan of care.

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

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

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

(2) Home placement reports. A report recommending that the child remain in his or her home or that the expectant mother remain in her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(4) Other out-of-home placements. A report recommending placement of an adult expectant mother outside of her home shall be in writing. A report recommending placement of a child in a foster home, group home, or residential care center for children and youth, in the home of a relative other than a parent, or in the home of a guardian under s. 48.977 (2) shall be in writing and shall include all of the following:

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

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

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and, if a permanency plan has previously been prepared for the child, specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child’s permanency plan[,] including, if appropriate, through an out–of–state placement{,].

NOTE: Par. (c) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

(d) 1. If the child has one or more siblings, as defined in s. 48.38 (4) (br) 1., who have been removed from the home or for whom an out–of–home placement is recommended, specific information showing that the county department, department in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the county department, department, or agency recommends that the child and his or her siblings not be placed in a joint placement, in which case the report shall include specific information showing that a joint placement would be contrary to the safety or well–being of the child or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the child and his or her siblings not be placed in a joint placement, specific information showing that the county department, department, or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the county department, department, or agency recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to the safety or well–being of the child or any of those siblings.

(dm) If the agency knows or has reason to know that the child is an Indian child who is being removed from the home of his or her parent or Indian custodian, a description of any efforts undertaken to determine whether the child is an Indian child; specific information showing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1.; specific information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful; a statement as to whether the out–of–home care placement recommended is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c); and, if the recommended placement is not in compliance with that order, specific information showing good cause, as described in s. 48.028 (7) (e), for departing from that order.

NOTE: Par. (dm) was created as par. (d) by 2009 Wis. Act 94 and renumbered to par. (dm) by the legislative reference bureau under s. 13.92 (1) (bmn) 2.

(4m) Support recommendations: Information to parents. In making a recommendation for an amount of child support under sub. (4), the agency shall consider the factors that the court considers under s. 49.345 (14) (c) for deviation from the percentage standard. Prior to the dispositional hearing under s. 48.335, the agency shall provide the child’s parent with all of the following:

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

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 49.345 (14) (c).

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

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


48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be in need of protection or services under s. 48.13 or an unborn child is adjudged to be in need of protection or services under s. 48.133.
(3) At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(3g) At hearings under this section, if the agency, as defined in s. 48.38 (1) (a), is recommending placement of the child in a foster home, group home, or residential care center for children and youth in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the welfare of the child.

(b) That the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2a) (b) 1. to 5. applies.

(c) That, if a permanency plan has previously been prepared for the child, the county department, department, or agency has made reasonable efforts to achieve the goal of the child’s permanency plan[, including, if appropriate, through an out-of-state placement{,}.]

Note: {An underscored comma was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.}

(d) 1. If the child has one or more siblings, as defined in s. 48.38 (4) (b) 1., who have been removed from the home or for whom an out-of-home placement is recommended, that the county department, department, or agency has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the county department, department, or agency recommends that the child and his or her siblings not be placed in a joint placement, in which case the county department, department, or agency shall present as evidence specific information showing that a joint placement would be contrary to the safety or well-being of the child or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the child and his or her siblings not be placed in a joint placement, that the county department, department, or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the county department, department, or agency recommends that such visitation or interaction not be provided, in which case the county department, department, or agency shall present as evidence specific information showing that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(3) At hearings under this section involving an Indian child, if the agency, as defined in s. 48.38 (1) (a), is recommending removal of the Indian child from the home of his or her parent or Indian custodian and placement of the Indian child in a foster home, group home, or residential care center for children and youth in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child under s. 48.028 (4) (d) 1. and that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

(b) That active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

(c) That the placement recommended is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) or, if that placement is not in compliance with that order, good cause, as described in s. 48.028 (7) (e), for departing from that order.

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

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

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

(6) If the dispositional order places the child outside the home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the child or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the child, unless that information has previously been provided under s. 48.21 (3) (f). If the parent does not provide that information at the hearing, the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under the dispositional order shall permit the parent to provide the information at a later date.


Judicial Council Note, 1980; Sub. (4) allows the court to admit testimony on the record by telephone or live television at hearings on disposition, revision and extension of orders, or change of placement, on request of any party, unless good cause is shown. [Re Order effective Jan. 1, 1988.]

The petitioner bears the burden of proof by the greater weight of the credible evidence for purposes of dispositional and extension hearings. In Interest of T.M.S. 152 Wis. 2d 345, 448 N.W.2d 262 (Ct. App. 1989).

48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services. If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 54, or 115 to be developmentally disabled, mentally ill, or to have a disability specified in s. 115.76 (5) in facilities that exclusively treat those categories of children, and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother’s home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services referred to her.

The dispositions under this section are as follows:

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

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

(2m) Place the child in the child’s home under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child’s family, which may include individual, family, or group counseling, homemaker or parent aide services, respite care, housing assistance, child care, parent skills training, or prenatal development training or education.

(2r) Place the child as provided in sub. (2) or (2m) and, in addition, request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court—
appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(3) Subject to sub. (3m), designate one of the following as the placement for the child:

(a) The home of a parent or other relative of the child, except that the judge may not designate the home of a parent or other relative of the child as the child’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 child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child 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 judge may not designate the home of a person who is not required to be licensed as the child’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 child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(c) A foster home licensed under s. 48.62, a group home licensed under s. 48.625, or in the home of a guardian under s. 48.977 (2).

(3m) Subject to s. 48.028 (7) (c), if the child is an Indian child who is being removed from the home of his or her parent or Indian custodian and placed outside of that home, designate one of the placements listed in s. 48.028 (7) (b) 1. to 4. as the placement for the Indian child, in the order of preference listed, unless the court finds good cause, as described in s. 48.028 (7) (c), for departing from that order.

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

(a) A relative of the child.

(b) The county department in a county having a population of less than 500,000.

(bm) The department in a county having a population of 500,000 or more.

(c) A licensed child welfare agency.

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

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

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

(6m) If the report prepared under s. 48.33 (1) recommends that the child is in need of a coordinated services plan of care and if an initiative under s. 46.56 has been established in the county or, for a child who is a member of a tribe, as defined in s. 46.56 (1) (q), by a tribe, the judge may order an assessment of the child and the child’s family for eligibility for and appropriateness of the initiative, and if eligible for enrollment in the initiative, that a coordinated services plan of care be developed and implemented.

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

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

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

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

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

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

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

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

5. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a tribal school.

(b) The judge shall order the school board to disclose the child’s pupil records, as defined under s. 118.125 (1) (d), to the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child, as necessary to determine the child’s compliance with the order under par. (a).

(c) The judge shall order the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board, tribal school, or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a child with a disability, as defined under s. 115.76 (5).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a
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Disposition of unborn child of adult expectant mother adjudged in need of protection or services. If the judge finds that the unborn child of an adult expectant mother is in need of protection or services, 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. The dispositions under this section are as follows:

(1) COUNSELING. Counsel the adult expectant mother.

(2) SUPERVISION. Place the adult expectant mother under supervision of the county department, the department, if the department approves, or a suitable adult, including an adult relative or friend of the adult expectant mother, under conditions prescribed by the judge including reasonable rules for the adult expectant mother's conduct, designed for the physical well-being of the unborn child. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or prenatal development training or education and to make a reasonable contribution, based on ability to pay, for the cost of those services.

(3) PLACEMENT. Designate one of the following as the placement for the adult expectant mother:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A community-based residential facility, as defined in s. 50.01 (1g).

(4) SPECIAL TREATMENT OR CARE. (a) If the adult expectant mother is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the adult expectant mother to obtain the special treatment or care. If the adult expectant mother fails or is financially unable to obtain the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

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

(5) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of treatment for the use of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the adult expectant mother 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 approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of less than 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for any 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. 50.01 (1g).

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*.

*Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?"
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having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother about the adult expectant mother's attendance at the program.

(c) Payment for any treatment or education ordered under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(6) INPATIENT ALCOHOL OR DRUG TREATMENT. (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the adult expectant mother is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the adult expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the adult expectant mother's needs, the judge may order the adult expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(7) SERVICES FOR CHILD WHEN BORN. If it appears that the unborn child may be born during the period of the dispositional order, the judge may order that the child, when born, be provided any services or care that may be ordered for a child in need of protection or services under s. 48.345.


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

(b) The disposition of a child or an unborn child, and any record of evidence given in a hearing in court, shall not be admissible as evidence against the child or the expectant mother of the unborn child in any case or proceeding in any other court except for the following:

1. In sentencing proceedings after the child or expectant mother has been convicted of a felony or misdemeanor and then only for the purpose of a presentence investigation.

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

3. In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a child.

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


48.355 Dispositional orders. (1) INTENT. In any order under s. 48.343 or 48.347 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain and protect the well-being of the child or unborn child which are the least restrictive of the rights of the parent and child, of the rights of the parent and child expectant mother or of the rights of the adult expectant mother, and which assure the care, treatment or rehabilitation of the child and the family, of the child expectant mother, the unborn child and the family or of the adult expectant mother and the unborn child, consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect or unborn child abuse, when it is consistent with the best interest of the child or unborn child in terms of physical safety and physical health, the family and the unborn child shall be a policy of transferring custody of a child from the parent or of placing an expectant mother outside of her home only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

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

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

1. The specific services to be provided to the child and family, to the child expectant mother and family, or to the adult expectant mother and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian.

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

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

2m. If the adult expectant mother is placed outside her home, the name of the place or facility, including transitional placements, where the expectant mother shall be treated.

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

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

4m. If the child is placed outside the home and if the child’s parent has not already provided a statement of income, assets, debts and living expenses to the county department or, in a county having a population of 500,000 or more, the department under s. 48.30 (6) (b) or (c) or 48.31 (7) (b) or (c), an order for the parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by 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.

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

6. If the child is placed outside the home, a finding that a continu- ing placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies, and, if a permanency plan has previously been prepared for the child, a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child’s permanency plan[, ] including, if appropriate, through an out-of-state placement. The court may specify in this subdivision the county case−by−case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order[. ]. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

NOTE: Subd. 6. is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

6g. If the child is placed outside the home under the supervision of the county department or, in a county having a population of 500,000 or more, the department, an order placing the child into the placement and care responsibility of the county department or department as required under 42 USC 672 (a) (2) and assigning the county department or department primary responsibility for providing services to the child.

6m. If the child is placed outside the home in a placement recommended by the agency designated under s. 48.33 (1), a statement that the court approves the placement recommended by the agency or, if the child is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties relating to the child’s placement.

6p. If the child is placed outside the home and if the child has one or more siblings, as defined in s. 48.38 (4) (br) 1., who have also been placed outside the home, a finding as to whether the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the child or any of those siblings, in which case the court shall order the county department, department, or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the child or any of those siblings.

6r. If the court finds that any of the circumstances specified in sub. (2d) (b) 1. to 5. applies with respect to a parent, a determin- ation that the county department, department, in a county hav- ing a population of 500,000 or more, or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

6s. If the child is an Indian child who is being removed from the home of his or her parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evi- dence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 6., except that for the sole purpose of determining whether the cost of providing care for an Indian child is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 6. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

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

(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district, or the governing body of the private school, in which the child is enrolled, or shall request the governing body of the tribal school in which the child is enrolled, to notify the county department that is responsible for supervising the child or, in a county having a population of 500,000 or more, the department within 5 days after any violation of the condition by the child.

(c)(m) 1. Subject to subd. 2., the court shall order the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 48.21 (5) (e) 2. a. e. to. e. to all relatives of the child named under s. 48.335 (6) and to all adult relatives, as defined in s. 48.21 (5) (e) 1., of the child within 30 days after the child is removed from the custody of the child’s parents unless the child is returned to his or her home within that period. The court may also order the county department, department, or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under s. 48.335 (6) within 30 days after the child is removed from the custody of the child’s parent unless the child is returned to his or her home within that period. The court may order the county department, department, or agency to conduct a diligent search in order to locate and provide notice of that information to any person named under s. 48.335 (6) or to an adult relative if the county department, department, or agency has reason to believe that it would be dangerous to the child or to the parent if the child were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 48.21 (5) (e) 2.

(d) The court shall provide a copy of a dispositional order relating to a child in need of protection or services to the child’s parent, guardian, legal custodian, or trustee, to the child through the child’s counsel or guardian ad litem, to the child’s court−appointed special advocate, and if the child is an Indian child who has been removed from the home of his or her parent or Indian custodian and placed outside that home, to the Indian child’s Indian custodian and tribe. The court shall provide a copy of a dispositional order relating to an unborn child in need of protection or services to the expectant mother, to the unborn child through the unborn child’s guardian ad litem, to the parent, guardian, legal custodian, or trustee of a child expectant mother and, if the expectant mother is an Indian child, to the expectant mother’s Indian custodian and tribe.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for provid-
ing services to a child under a court order may, at the same time as the county department, department, or agency is making the reasonable efforts required under sub. (2) (b) 6. to prevent the removal of the child from the home or to make it possible for the child to return safely to his or her home, work with the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, including reasonable efforts to identify an appropriate out-of-state placement.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, while assuring that the child’s health and safety are the paramount concerns, the court’s consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family’s situation was completed, including a determination of the likelihood of protecting the child’s health, safety and welfare effectively in the home.
2. Financial assistance, if applicable, was provided to the family.
3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:
   a. In–home support services, such as homemakers and parent aides.
   b. In–home intensive treatment services.
   c. Community support services, such as child care, parent skills training, housing assistance, employment training, and emergency mental health services.
   d. Specialized services for family members with special needs.
4. Monitoring of client progress and client participation in services was provided.
5. A consideration of alternative ways of addressing the family’s needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, while assuring that the child’s health and safety are the paramount concerns, the court’s consideration of reasonable efforts shall include the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:
1. “Aggravated circumstances” include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse and sexual abuse.
2. “Sexual abuse” means any of the following:
   a. A violation of s. 940.225, 944.30, 944.02, 948.025, 948.05, 948.051, 948.055, 949.06, 948.085, 948.09 or 948.10.
   b. A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.
   c. A violation of the law of any other state or federal law if that violation would be a violation listed under subd. 2. a. or b. if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns, or a finding as to whether the county department, department, or agency has made reasonable efforts with respect to a parent of a child to achieve the permanency plan goal of returning the child safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the child to aggravated circumstances, as evidenced by a final judgment of conviction.
2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.
3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), (5), 940.225 (1) or (2), 940.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.
4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.
5. That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger, as evidenced by a final order of a court of competent jurisdiction making that finding.
6. (bm) The court shall find a violation of sub. (2) 1. to 5. on a case–by–case basis based on circumstances specific to the child and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 5. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) If the court finds that any of the circumstances specified in par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the child.

(d) This subsection does not affect the requirement under sub. (2) (b) 6. that the court include in a dispositional order removing an Indian child from the home of his or her parent or Indian custodian and placing the child outside that home a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

(2e) PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES. (a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 48.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a child’s placement is changed under s. 48.357 or a dispositional order is revised under s. 48.363 or extended under s. 48.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy
of the revised plan with the court. Each plan filed under this para-
graph shall be made a part of the court order.
(c) Either the court or the agency that prepared the permanency
plan shall furnish a copy of the original plan and each revised plan
to the child’s parent or guardian, to the child or the child’s counsel
or guardian ad litem, to the child’s court—appointed special adva-
cate and to the person representing the interests of the public.

2m TRANSITIONAL PLACEMENTS. The court order may
include the name of transitional placements, but may not desig-
nate a specific time when transitions are to take place. The proce-
dures of ss. 48.357 and 48.363 shall govern when such transitions
take place. However, the court may place specific time limitations
on interim arrangements made for the care of the child or for the
reatment of the expectant mother pending the availability of the
dispositional placement.

(3) PARENTAL VISITATION. (a) Except as provided in par. (b), if,
after a hearing on the issue with due notice to the parent or
guardian, the court finds that it would be in the best interest of
the child, the court may set reasonable rules of parental visitation.
(b) 1. Except as provided in subd. 2., the court may not grant
visitation under par. (a) to a parent if the parent has been
convicted under s. 940.01 of the first—degree intentional homo-
icide, 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.

1m. Except as provided in subd. 2., if a parent who is granted
visitation rights with a child under par. (a) is 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 par-
ent, and the conviction has not been reversed, set aside or vacated,
the court shall issue an order prohibiting the parent from having
visitation with the child on petition of the child, the guardian
or legal custodian of the child, a person or agency bound by the
dispositional order or the district attorney or corporation counsel
of the county in which the dispositional order was entered, or on
the court’s own motion, and on notice to the parent.

2. Subdivisions 1. and 1m. do not apply if the court deter-
moves 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.

(4) TERMINATION OF ORDERS. Except as provided under s.
48.368, an order under this section or s. 48.357 or 48.365 made
before the child reaches 18 years of age that places or continues
the placement of the child in his or her home shall terminate at
the end of one year after its entry unless the judge specifies a shorter
period of time or the judge terminates the order sooner. Except as
provided under s. 48.368, an order under this section or s. 48.357
or 48.365 made before the child reaches 18 years of age that places
or continues the placement of the child in a foster home, group
home, or residential care center for children and youth or in the
home of a relative other than a parent shall terminate when the
child reaches 18 years of age, at the end of one year after its entry,
or, if the child is a full—time student at a secondary school or its
vocational or technical equivalent and is reasonably expected to
complete the program before reaching 19 years of age, when the
child reaches 18 years of age, whichever is later, unless the judge
specifies a shorter period of time or the judge terminates the order sooner.
An order under this section or s. 48.357 or 48.365 relating to an
unborn child in need of protection or services that is made before
the unborn child is born shall terminate at the end of one year
after its entry unless the judge specifies a shorter period of time
or the judge terminates the order sooner.

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

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL
CUSTODIANS, EXPECTANT MOTHERS AND OTHER ADULTS. In addition to any
dispositional order entered under s. 48.345 or 48.347, the court
may enter an order applicable to the parent, guardian or legal
custodian of a child, to a family member of an adult expectant
mother or to another adult as provided under s. 48.45.

28, 79, 94, 185, 302, s. 13.92 (2) (i).

A circuit court may order parents to pay toward a child’s support when a CHIPS
child is placed in residential treatment, but the court may not assess any of the facili-
ties’s education—related costs against the parents.

48.357 Change in placement. (1) (a) The person or agency
primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a
change in the placement of the child or expectant mother, whether or not the change requested is authorized in the disposi-
tional order, as provided in par. (am) or (c), whichever is applicable.

(am) 1. If the proposed change in placement involves any
change in placement other than a change in placement specified in
par. (c), the person or agency primarily responsible for imple-
enting the dispositional order, the district attorney, or the corpo-
ration counsel shall cause written notice of the proposed change in
placement to be sent to the child, the parent, guardian, and legal

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in
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custodian of the child, any foster parent or other physical custodian described in s. 48.62 (2) of the child, the child’s court-appointed special advocate, and, if the child is an Indian child who has been removed from the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe. If the child is the expectant mother of an unborn child under s. 48.133, written notice shall also be sent to the unborn child by the unborn child’s guardian ad litem. If the change in placement involves an adult expectant mother of an unborn child under s. 48.133, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child’s guardian ad litem. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

1g. If the child is an Indian child who has been removed from the home of his or her parent or Indian custodian and if the proposed change in placement would change the Indian child’s placement from a placement outside that home to another placement outside that home, a notice under subd. 1. shall contain specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1., specific information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 48.028 (7) (c), for departing from that order.

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2b) 2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Except as provided in subd. 2m., placements may not be changed until 10 days after that notice is sent to the court unless written waivers of objection are signed as follows:

a. By the parent, guardian, legal custodian, or Indian custodian of the child, if 12 years of age or over, and the child’s tribe, if the child is an Indian child who has been removed from the home of his or her parent or Indian custodian.

b. By the child expectant mother, if 12 years of age or over, her parent, guardian, legal custodian, or Indian custodian, the unborn child by the unborn child’s guardian ad litem, and the child expectant mother’s tribe, if she is an Indian child who has been removed from the home of her parent or Indian custodian.

c. By the adult expectant mother and the unborn child by the unborn child’s guardian ad litem.

2m. Changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection is filed by a person who received notice that new information is available that affects the advisability of the court’s dispositional order.

3. If the court changes the child’s placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2.

2. If the court changes the placement of an Indian child who has been removed from the home of his or her parent or Indian custodian from a placement outside that home to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (c), for departing from that order.

(c) 1. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child’s health and safety are the paramount concerns.

1m. If the child is an Indian child and if the proposed change in placement would change the placement of the child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a request under subd. 1. shall also contain specific information showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1., specific information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 48.028 (7) (c), for departing from that order.

2. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child’s court-appointed special advocate, all parties that are bound by the dispositional order, and, if the child is an Indian child, the Indian child’s Indian custodian and tribe. Subject to subd. 2r., if all parties consent, the court may proceed immediately with the hearing.

NOTE: The cross-reference to subd. 2r. was changed from subd. 2m. by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the remumbering under s. 13.92 (1) (bm) 2. by the legislative reference bureau of subd. 2m., as created by 2009 Wis. Act 96.

2m. If the court changes the child’s placement from a placement in the child’s home to a placement outside the child’s home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the child’s family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 48.028 (7) (c), for departing from that order.

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NOTE: Subd. 2c. was created as subd. 2m. by 2009 Wis. Act 94 and renumbered to subd. 2r. by the legislative reference bureau under s. 13.92 (1) (bm) 2.

3. If the court changes the child’s placement from a placement in the child’s home to a placement outside the child’s home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 48.355 (2d) (b) 1. to 5., applies with respect to a parent, the determination under sub. (2v) (a) 3.

If the court changes the placement of an Indian child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and contain specific information showing good cause, as described in s. 48.028 (7) (e), for departing from the order. (2)

If emergency conditions necessitate an immediate change in the placement of a child or expectant mother placed outside the home, the person or agency primarily responsible for implementing the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 48.355 (2d) (b) 1. to 5., applies with respect to a parent, the determination under sub. (2v) (a) 3.

If the court changes the placement of an Indian child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 48.355 (2d) (b) 1. to 5., applies with respect to a parent, the determination under sub. (2v) (a) 3.

If the court changes the placement of an Indian child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 48.355 (2d) (b) 1. to 5., applies with respect to a parent, the determination under sub. (2v) (a) 3.

NOTE: (2) The court shall hold a hearing prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement. A hearing is not required if the requested or proposed change in placement does not involve a change in placement of a child placed in the child’s home to a placement outside the child’s home, written waivers of objection to the proposed change in placement are signed by all persons entitled to receive notice under this paragraph, other than a court-appointed special advocate, and the court approves. If a hearing is scheduled, not less than 5 days before the hearing the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent or other physical custodian in s. 48.62 (2) of the child, the child’s court-appointed special advocate, all parties who are bound by the dispositional order, and, if the child is an Indian child, the Indian child’s Indian custodian and tribe. If the child is the expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child’s guardian ad litem, and all parties who are bound by the dispositional order, at least 3 days prior to the hearing.

If the change in placement involves an adult expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child’s guardian ad litem, and all parties who are bound by the dispositional order. If the Indian child’s parent, guardian, or legal custodian requests a hearing under par. (a) 2. or (a) 3., the court shall also notify the unborn child’s guardian ad litem. If the change in placement involves an adult expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child’s guardian ad litem, and all parties who are bound by the dispositional order, at least 3 days prior to the hearing.

Subject to par. (br), if all of the parties consent, the court may proceed immediately with the hearing.

NOTE: The cross-reference to par. (br) was changed from par. (bm) by the legislative reference bureau under s. 13.92 (1) (bm) 2., to reflect the renumbering under s. 13.92 (1) (bm) 2. of par. (bm), as created by 2009 Wis. Act 94.

NOTE: (br) If the child is an Indian child, and if the proposed change in placement would change the placement of the Indian child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, notice under par. (b) to the Indian child’s parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). Notwithstanding par. (b), no hearing on the request or proposal may be held until at least 10 days after receipt of the notice by the Indian child’s parent, Indian custodian, and tribe or, if the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian child’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.
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child from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

2. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2.

2m. If the child has one or more siblings, as defined in s. 48.38 (4) (br) 1., who have been placed outside the home or for whom a change in placement to a placement outside the home is requested, a finding as to whether the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for implementing the dispositional order has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the court shall order the county department, department, or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

4. If the change in placement order changes an Indian child's placement from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 1., except that for the sole purpose of determining whether the cost of providing care for an Indian child is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 1. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

(b) The court shall make the findings specified in par. (a) 1. and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) If the court finds under par. (a) 3. that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the child.

(d) 1. Subject to subd. 2. the court shall order the county department, the department in a county having a population of 500,000 or more, or the agency primarily responsible for implementing the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 48.21 (5) (e) 2. a. to e. to all relatives of the child named under sub. (1) (c) 2m. or (2m) (bm) and to all adults under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the child is removed from the custody of the child's parent unless the child is returned to his or her home within that period. The court may also order the county department, department, or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the child is removed from the custody of the child's parent unless the child is returned to his or her home within that period. The county department, department, or agency may not provide that notice to a person named under sub. (1) (c) 2m. or (2m) (bm) or to an adult relative if the county department, department, or agency has reason to believe that it
would be dangerous to the child or to the parent if the child were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 48.21 (5) (e) 2. or 48.355 (2) (cm) 1.

(4d) (a) Except as provided in par. (b), the court may not change a child's placement to a placement in the home of 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, if the conviction has not been reversed, set aside or vacated.

(4m) Exception as provided in par. (b), if a parent in whose home a child is placed is 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, the court shall change the child's placement to a placement out of the home of the parent on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

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

(5m) (a) If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. If the court or the county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to any parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded by the department of health services for a child in foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

5. The court may not change the placement of an expectant mother's unborn child in need of protection or services from a placement in the expectant mother's home to a placement outside of the expectant mother's home unless the court finds that the expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

6. No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the child's home to a placement outside the home the court may extend the expiration date of the original order to the date on which the child reaches 18 years of age, to the date that is one year after the date of the change in placement order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, to the date on which the child reaches 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall order the child's parent to provide notice to the parent.


To a foster parent is entitled to a hearing under s. 48.64 (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. Bingelhofer v. DHSS, 129 Wis. 2d 140, 378 N.W.2d 898 (1986).


48.36 Payment for services. (1) (a) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.345 or by a change in placement under s. 48.357, the duty of the alternative placement. Support payments for residential services, when purchased or otherwise funded or provided by the department or a county department, shall be determined under s. 49.345 (14). Support payments for residential services, when purchased or otherwise funded by the department of health services or a county department under s. 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department or the county child support agency under s. 59.53 (5). If the court has insufficient information with which to determine the amount of support, the court shall order the child's parent to furnish a statement of income, assets, debts, and living expenses, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) If an expectant mother or a child whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological or psychiatric treatment by the court, the cost of those services or that treatment, if ordered by the court, shall be charged upon the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child or from an adult expectant mother as the court may order based on the ability of the parent, guardian or adult expectant mother to pay. This subsection shall be subject to s. 49.32 (1).
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48.36 Payment for alcohol and other drug abuse services. (1) In this section, “alcohol and other drug abuse services” means all of the following:

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

(b) Any special treatment or care that relates to alcohol or other drug abuse services ordered by a court under s. 48.345 (6) (a) or 48.347 (4) (a).

(c) Any alcohol or other drug abuse treatment or education ordered by a court under s. 48.345 (6) (a), (13) or (14) or 48.347 (4) (a), (5) or (6) (a).

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

1m. If an adult expectant mother neglects, refuses or is unable to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered alcohol and drug abuse services. If the adult expectant mother consents to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services, the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the adult expectant mother’s health insurance policy or other 3rd-party payment plan.

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

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

2. If a court in a county that does not have an alcohol and other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.345 (6) (a), 48.347 (4) (a) or 48.36.

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

1m. In counties that have an alcohol and other drug abuse program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the adult expectant mother’s county of legal residence to pay for the court-ordered alcohol and other drug abuse services provided for the adult expectant mother.

2. If a judge orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services under this paragraph, the provision of the alcohol and other drug abuse services shall be subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department under this section does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of alcohol and other drug abuse services. Payment by the county under this section does not prevent recovery of reasonable contribution toward the costs of the court-ordered alcohol and other drug abuse services from the parent or adult expectant mother which is based upon the ability of the parent or adult expectant mother to pay. This subsection is subject to s. 49.32 (1).


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

(2) This section applies to the payment of court-ordered special treatment or care under s. 48.345 (6) (a), whether or not custody has been taken from the parent, and to the payment of court-ordered special treatment or care under s. 48.347 (4) (a). (3) If a child’s parent neglects, refuses or is unable to provide court-ordered special treatment or care for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered special treatment or care. If the parent consents to provide court-ordered special treatment or care for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the parent’s health insurance policy or other 3rd-party payment plan.

(3m) If an adult expectant mother neglects, refuses or is unable to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered special treatment or care. If the adult expectant mother consents to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the adult expectant mother’s health insurance policy or other 3rd-party payment plan.

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

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

(c) A county department that pays for court-ordered special treatment or care under par. (a) may recover from the parent or adult expectant mother, based on the ability of the parent or adult expectant mother to pay, a reasonable contribution toward the costs of the court-ordered special treatment or care. This paragraph is subject to s. 49.32 (1).

48.363 Revision of dispositional orders. (1) (a) A child, the child’s parent, guardian, legal custodian, or Indian custodian, an expectant mother, an unborn child by the unborn child’s guardian ad litem, any person or agency bound by a dispositional order, or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent. The court may also propose a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the court’s disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available which affects the advisability of the court’s dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

(b) If a hearing is held, at least 3 days before the hearing the court shall notify the child, the child’s parent, guardian, legal custodian, and Indian custodian, all parties bound by the dispositional order, the child’s foster parent or other physical custodian described in s. 48.62 (2), the child’s court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered, and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s tribe. If the child is the expectant mother of an unborn child under s. 48.133, the court shall also notify the unborn child by the unborn child’s guardian ad litem. If the proceeding involves an adult expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child through the unborn child’s guardian ad litem, all parties bound by the dispositional order, and the district attorney or corporation counsel in the county in which the dispositional order was entered, at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(c) If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the child’s parent to provide a statement of income, assets, debts and living expenses to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to the parent ordered to provide a statement of income, assets, debts, and living expenses a document setting forth the percentage standard established by the department under s. 49.22 (9) and the manner of its application established by the department under s. 49.345 (14) (g) and listing the factors that a court may consider under s. 49.345 (14) (c).

(d) 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 person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the child’s parent shall provide that statement to 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.

(1m) If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent or other physical custodian described in s. 48.62 (2) of the child a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2) If the court revises a dispositional order with respect to the amount of child support to be paid by a parent for the care and maintenance of the parent’s minor child who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent in the manner provided in s. 49.345 (14).


Sub. (1) does not set the procedure to adjudicate the issue of residence for an incompetent minor whose parent’s residence has changed. Waushara County v. Dodge County, 229 Wis. 2d 766, 601 N.W.2d 296 (Ct. App. 1999), 98−3022.

48.365 Extension of orders. (1) In this section, a child is considered to have been placed outside of his or her home on the date on which the child was first removed from his or her home.

(1m) The parent, child, guardian, legal custodian, Indian custodian, expectant mother, unborn child by the unborn child’s guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered, or the court on its own motion may request an extension of an order under s. 48.355 including an order under s. 48.355 that was entered before the child was born. The request shall be submitted to the court that entered the order. An order under s. 48.355 may be extended only as provided in this section.

(2) No order may be extended without a hearing. The court shall provide notice of the time and place of the hearing to the child, the child’s parent, guardian, legal custodian, and Indian custodian, all the parties present at the original hearing, the child’s foster parent or other physical custodian described in s. 48.62 (2), the child’s court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s tribe. If the child is an expectant mother of an unborn child under s. 48.133, the court shall also notify the unborn child by the unborn child’s guardian ad litem. If the proceeding involves an adult expectant mother of an unborn child under s. 48.133, the court shall notify the adult expectant mother, the unborn child through the unborn child’s guardian ad litem, all parties bound by the dispositional order, or the district attorney or corporation counsel in the county in which the dispositional order was entered, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2g) (a) At the hearing the person or agency primarily responsible for providing services to the child or expectant mother shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the rehabilitation or care and treatment of the child or for the rehabilitation and treatment of the expectant mother and the care of the unborn child.

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

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

2. An evaluation of the child’s adjustment to the placement and of any progress the child has made, suggestions for amendment of the permanency plan, and specific information showing...
the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the child’s placement.

3. If the child has been placed outside of his or her home in a foster home, group home, residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the child, and whether or not the child should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the child be registered with the adoption information exchange or report the reason why registering the child is contrary to the best interest of the child.

4. If the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, specific information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

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

(2m) (a) 1. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the person or agency primarily responsible for providing services to the child shall present as evidence specific information showing that the person or agency has made reasonable efforts to achieve the goal of the child’s permanency plan[,] including, if appropriate, through an out-of-state placement[, under]. If an Indian child is placed outside the home of his or her parent or Indian custodian, the person or agency primarily responsible for providing services to the Indian child shall also present as evidence specific information showing that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

NOTE: Subdiv. 1. is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (b). The comma in square brackets was removed by 2009 Wis. Acts 185, but its reinsertion is required. The comma and “under” in curly brackets were inserted by 2009 Wis. Acts 79 and 94 respectively, but are unnecessary. Corrective legislation is pending.

1m. The judge shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the person or agency primarily responsible for providing services to the child to achieve the goal of the child’s permanency plan[,] including, if appropriate, through an out-of-state placement[, under]. If the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the findings of fact shall also include a finding that active efforts under s. 48.028 (4) (d) 2. were made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. An order shall be issued under s. 48.355.

NOTE: Subd. 1m. is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (b). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required.
and the language that replaced it in Act 79 is shown in curly brackets. Corrective legislation is pending.

(b) If a child has been placed outside the home under s. 48.345, or if an adult expectant mother has been placed outside the home under s. 48.347, and an extension is ordered under this subsection, the judge shall state in the record the reason for the extension.

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

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

(5) Except as provided in s. 48.368, an order under this section that continues the placement of a child in his or her home or that relates to an unborn child of an adult expectant mother shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 48.368, an order under this section that continues the placement of a child in an out-of-home placement shall be for a specified length of time not to exceed the date on which the child reaches 18 years of age, one year after the date of entry of the order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, the date on which the child reaches 19 years of age, whichever is later.

(6) If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances specified in s. 48.315 (1). The court shall grant appropriate relief as provided in s. 48.315 (3) with respect to any request to extend a dispositional order on which a hearing is not held within the time period specified in this subsection. Failure to object if a hearing is not held within the time period under this subsection waives any challenge to the court’s competency to act on the request.

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


An extension under sub. (6) does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis.2d 567, 326 N.W.2d 762 (1982).

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18 during the extension period. In Interest of P.W. 153 Wis.2d 50, 449 N.W.2d 615 (1990).

48.366 Extended court jurisdiction. (1) APPLICABILITY

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

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

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

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

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

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

1. The person subject to the order.

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

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

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

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

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

1. The proposed conditions of aftercare supervision.

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

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

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

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

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

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

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

1. The person subject to the order.

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

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

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

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

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

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

(8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections may transfer a person subject to an order between juvenile correctional facilities. After the person attains the age of 17 years, the department of corrections may place the person in a state prison named in s. 302.01, except that the department of corrections may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). If the department of corrections places a person subject to an order under this section in a state prison, that department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n). If the department of corrections places a person subject to an order under this section in a state prison, the department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

48.366 Continuation of dispositional orders. (1) If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed under ch. 814, as merged by the legislative reference bureau under s. 13.92 (2) (i), the department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n). If the department of corrections places a person subject to an order under this section in a state prison, the department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5) (a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

(2) If a child’s placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the child while a dispositional order is in effect which is in effect with respect to the child, such dispositional order, revision order or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

(3) At the time of placement of a child in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 48.38 (1) (a), responsible for preparing the child’s permanency plan shall provide to the foster parent, relative, or operator of the group home or residential care center for children and youth at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of an HIV test, as defined in s. 252.01 (2m), of the child, as provided under s. 252.15 (3m) (d) 15. , including results included in a court report or permanency plan. At the time that the HIV test results are provided, the agency shall notify the foster parent, relative, or operator of the group home or residential care center for children and youth of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the child to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan.

(c) Any other medical information concerning the child that is necessary for the care of the child.

History:

48.370 Costs and fees. (1) A court assigned to exercise jurisdiction under this chapter and ch. 938 may not impose costs, fees, or surcharges under ch. 814 against a child under 14 years of age but may impose costs, fees, and surcharges under ch. 814 against a child 14 years of age or older.

(2) Notwithstanding sub. (1), no costs, fees, or surcharges may be imposed under ch. 814 against any child in a circuit court exercising jurisdiction under s. 48.16.

History:
(4) Subsection (1) does not preclude an agency, as defined in s. 48.38 (1) (a), that is arranging for the placement of a child from providing the information specified in sub. (1) (a) to (c) to a person specified in sub. (1) (intro.) before the time of placement of the child. Subsection (3) does not preclude an agency, as defined in s. 48.38 (1) (a), responsible for preparing a child’s report or permanency plan from providing the information specified in sub. (3) (a) to (e) to a person specified in sub. (3) (intro.) before the time of placement of the child.

(5) Except as permitted under s. 252.15 (6), a foster parent, relative, or operator of a group home or residential care center for children and youth that receives any information under sub. (1) or (3), other than the information described in sub. (3) (e), shall keep the information confidential and may disclose that information only for the purposes of providing care for the child or participating in a court hearing or permanency plan review concerning the child.

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

48.373 Medical authorization. (1) The court assigned to exercise jurisdiction under this chapter and ch. 938 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 938 determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 and consents. (2) Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

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

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 of childbearing 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.

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

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

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

1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record and report the sexual intercourse as required under s.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*.
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1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor’s foster parents, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department, or the 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., 5. 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, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department, or the 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).

4. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2).

5. The court may make any other finding of fact, conclusion of law, or a final order under s. 48.257 or the affidavit under paragraph (c) which it deems necessary in the interest of the minor.

6. The court may also make any other findings of fact, conclusions of law, or a final order under s. 48.257 or the affidavit under paragraph (c) which it deems necessary in the interest of the minor.

7. 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 or more of the persons specified in subd. 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 ordered member of the clergy’s affidavit or may 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 a 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 period. 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 in time of the period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court’s order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court’s order denying the petition and shall also notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c), (f), and (h), if the court fails to act within the applicable time period specified under subd. 1. without the prior consent of the minor and the minor’s counsel, if any, of 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.

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).

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: *
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 serve a certified copy of the order on 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 the 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.

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.

(i) Certain persons barred from proceedings. No parent, or guardian or legal custodian, if one has been appointed, or foster parent, if the minor has been placed in a foster home and the minor’s parent has signed a waiver granting the department, a county department, or the 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.

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.

Assistance to minors concerning parental consent for abortion. If a minor who is contemplating an abortion requests assistance from a county department under s. 46.215, 46.22 or 46.23 in seeking the consent of the minor’s parent, guardian, or legal custodian, or in seeking the consent of an adult family member, for the contemplated abortion or in seeking a waiver from the circuit court, the county department shall provide assistance, including, if so requested, accompanying the minor as appropriate.


Any law requiring parental consent for a minor to obtain an abortion must ensure that the parent does not have absolute, and possibly arbitrary, veto power. Bellotti v. Baird, 443 U.S. 622 (1979).

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).
from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent.

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

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.

(br) 1. In this paragraph, “sibling” means a person who is a brother or sister of the child, whether by blood, marriage, or adoption, including a person who was a brother or sister of a child before the person was adopted or parental rights to the person were terminated.

2. If the child has one or more siblings who have also been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together and, if a decision is made not to place the child and his or her siblings in a joint placement, a statement as to why a joint placement would be contrary to the safety or well−being of the child or a description of the efforts made to provide for frequent visitation or other ongoing interaction between the child and those siblings. If a decision is made not to provide for that visitation or interaction, the permanency plan shall include a statement as to why that visitation or interaction would be contrary to the safety or well−being of the child or any of those siblings.

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

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child’s home is either unavailable or inappropriate or documentation that placement more than 60 miles from the child’s home is in the child’s best interests. The placement of a child in a licensed foster home more than 60 miles from the child’s home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1).
2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child’s home.
3. That the placement is made to facilitate the anticipated adoption of the child under s. 48.833 or 48.837.

(dg) Information about the child’s education, including all of the following:

1. The name and address of the school in which the child is or was most recently enrolled.
2. Any special education programs in which the child is or was previously enrolled.
3. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child’s grade level performance.
4. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33 (1) (e).

(dm) If as a result of the placement the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child’s transfer to another school would be in the child’s best interests.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child’s physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child’s immunization record, including the name and date of each immunization administered to the child.
3. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.
4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

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

(f) A description of the services that will be provided to the child, the child’s family, and the child’s foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.
2. Meet the child’s physical, emotional, social, educational and vocational needs.
3. Improve the conditions of the parents’ home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(gf) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a child’s permanency plan:

1. Return of the child to the child’s home.
2. Placement of the child for adoption.
3. Placement of the child with a guardian.
4. Permanent placement of the child with a fit and willing relative.

5. Some other alternative permanent placement, including sustaining care, independent living, or long−term foster care.

(fm) If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal, including, if appropriate, through an out−of−state placement.

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

(h) If the child is 15 years of age or over, an independent living plan describing the programs and services that are or will be provided to assist the child in preparing for the transition from out−of−home care to independent living. The plan shall include all of the following:

1. The anticipated age at which the child will be discharged from out−of−home care.
2. The anticipated amount of time available in which to prepare the child for the transition from out−of−home care to independent living.
3. The anticipated location and living situation of the child on discharge from out−of−home care.
4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out−of−home care to independent living.

5. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out−of−home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

   (i) A statement as to whether the child’s age and developmental level are sufficient for the court to consult with the child at the permanency plan determination hearing under sub. (4m) (c) or at the permanency plan hearing under sub. (5m) (c) 2. or s. 48.43 (5) (b) 2. or for the court or panel to consult with the child at the permanency plan review under sub. (5) (bm) 2. and, if a decision is made that it would not be age appropriate or developmentally appropriate for the court or panel to consult with the child, a statement as to why consultation with the child would not be appropriate.

   (im) If the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, all of the following:

      1. The name, address, and telephone number of the Indian child’s Indian custodian and tribe.

      2. A description of the remedial services and rehabilitation programs offered under s. 48.028 (4) (d) 2. in an effort to prevent the breakup of the Indian child’s family.

      3. A statement as to whether the Indian child’s placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the placement is not in compliance with that order, a statement as to whether there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

NOTE: Par. (im) was created as par. (b) by 2009 Wis. Act 94 and renumbered to par. (b) by the legislative reference bureau under s. 13.92 (4) (bm) 2.

   (j) If the child is placed in the home of a relative or other person described in s. 48.623 (1) (b) 1. who will be receiving subsidized guardianship payments, a description of all of the following:

      1. The steps the agency has taken to determine that it is not appropriate for the child to be returned to his or her home or to be adopted.

      2. If a decision has been made not to place the child and his or her siblings, as defined in par. (br) 1., in a joint placement, the reasons for separating the child and his or her siblings during the placement.

      3. The reasons why a permanent placement with a fit and willing relative or other person described in s. 48.623 (1) (b) 1. through a subsidized guardianship arrangement is in the best interests of the child. In the case of an Indian child, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2).

   (k) The ways in which the child and the relative or other person described in s. 48.623 (1) (b) 1. meet the eligibility requirements specified in s. 48.623 (1) for the receipt of subsidized guardianship payments.

   (l) The efforts the agency has made to discuss adoption of the child by the relative or other person described in s. 48.623 (1) (b) 1. as a more permanent alternative to guardianship and, if that relative or other person has chosen not to pursue adoption, documentation of the reasons for not pursuing adoption.

   (m) The efforts the agency has made to discuss the subsidized guardianship arrangement with the child’s parents or, if those efforts were not made, documentation of the reasons for not making those efforts.

   (4m) REASONABLE EFFORTS NOT REQUIRED: PERMANENCY DETERMINATION HEARING.

   (a) If in a proceeding under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of hearing. At the hearing, the court shall consider placing the child in a placement outside this state if the court determines that such a placement would be in the best interests of the child and appropriate to achieving the goal of the child’s permanency plan.

NOTE: Sub. (4m) (title) and (a) are as shown by 2009 Wis. Act 79, s. 56, and 2009 Wis. Act 94, s. 143, and as merged by the legislative reference bureau under s. 13.92 (2) (d). “Permanency” was capitalized in Act 94, but not Act 79. Corrective legislation is pending.

   (b) At least 10 days before the date of the hearing, the court shall notify the child[, the child’s any parent, guardian, and legal custodian[,] of the child[,] and, if the child’s] any foster parent or other physical custodian described in s. 48.62 (2) of the child[,] the operator of the facility in which the child is living, or the relative with whom the child is living[,] and, if the child is an Indian child, the Indian child’s Indian custodian and tribe of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they shall have a right to be heard at the hearing.

NOTE: Par. (b) is shown as affected by 2009 Wis. Act 79, s. 57, and 2009 Wis. Act 94, s. 114, and as merged by the legislative reference bureau under s. 13.92 (2) (d). The material in square brackets was created in Act 79, but is inconsistent with, and made unnecessary by, the sentence structure created by Act 94. Punctuation in curly brackets was not included in either act, but is required for correct punctuation. Corrective legislation is pending.

   (c) If the child’s permanency plan includes a statement under sub. (4) (i) indicating that the child’s age and developmental level are sufficient for the court to consult with the child regarding the child’s permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court to consult with the child, the court determines that consultation with the child would be in the best interests of the child, the court shall consult with the child, in an age−appropriate and developmentally appropriate manner, regarding the child’s permanency plan and any other matters the court finds appropriate. If none of those circumstances apply, the court may permit the child’s caseworker, the child’s counsel, or, subject to s. 48.235 (3) (a), the child’s guardian ad litem to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, expressing the child’s wishes, goals, and concerns regarding the permanency plan and those matters. If the court permits such a written or oral statement to be made or submitted, the court may nonetheless require the child to be physically present at the hearing.

   (d) The court shall give a foster parent[,] or other physical custodian described in s. 48.62 (2) [,] operator of a facility, or relative who is notified of a hearing under par. (b) a right to be heard at the hearing by permitting the foster parent[, ] or other physical custodian [,] or operator, or relative, to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. The foster parent[, ] or other physical custodian[,] or operator of a facility, or relative does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

NOTE: Par. (d) is shown as merged by the legislative reference bureau under s. 13.92 (2) (f) from s. 48.38 (4m) (d), as created by 2009 Wis. Act 94, s. 56, as affected by Act 79, s. 57, and s. 48.38 (5) (d) 2. as created by 2009 Wis. Act 114, s. 113, as affected by Act 94, s. 144. Each “or” in square brackets is made unnecessary by the merger. Punctuation in curly brackets was not included in either act, but is required for correct punctuation. Corrective legislation is pending.

   (5) PLAN REVIEW.

   (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing.

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?*
under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(a) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(b) The court or the agency shall notify the child, if he or she is 12 years of age or older; the child’s parent, guardian, and legal custodian; the child’s foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe of the [date,] time, [and] place[, and purpose] of the review, of the issues to be determined as part of the review, and of the fact that they [may have an opportunity] [shall have a right] to be heard at the review [by submitting written comments not less than 10 working days before the review or by participating at the review] [as provided in par. (bm) 1]. The court or agency shall notify the person representing the interests of the public, the child’s counsel, the child’s guardian ad litem, and the child’s court-appointed special advocate of the [date] [time, place, and purpose] of the review, of the issues to be determined as part of the review, and of the fact that they may [submit written comments not less than 10 working days before the review] [have an opportunity to be heard at the review as provided in par. (bm) 1]. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child’s case record.

NOTE: Par. (b) is shown as repealed and recreated by 2009 Wis. Act 94, s. 116. Act 94, s. 116, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 59. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 116, but that was deleted or replaced by Act 79, s. 59, is shown in square brackets and material that was inserted by Act 79 but not included in Act 94 is shown in curly brackets. Correction legislation is pending.

(bm) 1. A child, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the review under par. (b) shall have a right to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review or by participating at the review. A person representing the interests of the public, counsel, guardian ad litem, or court-appointed special advocate who is provided notice of the review under par. (b) may have an opportunity to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review. A foster parent, operator of a facility, or relative who receives notice of a hearing [review] under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the review is held solely on the basis of receiving that notice and right to be heard.

NOTE: The correct word is shown in brackets. Correction legislation is pending.

2. If the child’s permanency plan includes a statement under sub. (4) (i) indicating that the child’s age and developmental level are sufficient for the court or panel to consult with the child regarding the child’s permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court or panel to consult with the child, the court or panel determines that consultation with the child would be in the best interests of the child, the court or panel shall consult with the child, in an age-appropriate and developmentally appropriate manner, regarding the child’s permanency plan and any other matters the court or panel finds appropriate. If none of those circumstances apply, the court or panel may permit the child’s caseworker, the child’s counsel, or, subject to s. 48.235 (3) (a), the child’s guardian ad litem to make a written or oral statement during the review, or to submit a written statement prior to the review, expressing the child’s wishes, goals, and concerns regarding the permanency plan and those matters. If the court or panel permits such a written or oral statement to be made or submitted, the court or panel may nonetheless require the child to be physically present at the review.

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

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

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

3. The extent of any efforts to involve appropriate service providers in addition to the agency’s staff in planning to meet the special needs of the child and the child’s parents.

4. The progress toward eliminating the causes for the child’s permanency plan outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child.

5. The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.

6. If the child has been placed outside of his or her home, as described in s. 48.38 (1), in a foster home, group home, residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:

a. Being returned safely to his or her home.

b. Having a petition for the involuntary termination of parental rights filed on behalf of the child.

c. Being placed for adoption.

cg. Being placed with a guardian.

cm. Being placed in the home of a fit and willing relative of the child.

d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan[,] including, if appropriate, through an out-of-state placement[.]

8. If the child has one or more siblings, as defined in s. 48.38 (4) (br) 1., who have also been removed from the home, whether reasonable efforts were made by the agency to place the child in a placement that enables the sibling group to remain together unless the court or panel determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the court or panel shall determine whether reasonable efforts were made by the agency to provide for frequent visitation or other ongoing interaction between the child and...
those siblings, unless the court or panel determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

8m. If the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, whether active efforts under s. 48.028 (4) (d) 2. were made to prevent the breakup of the Indian child’s family, whether those efforts have proved unsuccessful, whether the Indian child’s placement is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), and, if the placement is not in compliance with that order, whether there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

NOTE: Subd. 8m. was created as subd. 8. by 2009 Wis. Act 94 and renumbered to subd. 8m. by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the child’s parent, guardian, and legal custodian, the person representing the interests of the public, the child’s counsel, the child’s guardian ad litem, the child’s court-appointed special advocate, and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe a copy of the permanency plan and any written comments submitted under par. (bm) 1. Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child’s guardian ad litem, the child’s court-appointed special advocate, and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe may have access to any other records concerning the child for the purpose of participating in the review.

A person permitted access to a child’s records under this paragraph may not disclose any information from the records to any other person.

NOTE: Par. (d) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (ii).

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order; the child or the child’s counsel or guardian ad litem; the person representing the interests of the public; the child’s parent, guardian, or legal custodian; the child’s court-appointed special advocate; the child’s foster parent [or {i}], the operator of the facility where the child is living, {i} or, the relative with whom the child is living; and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe.

NOTE: Par. (e) is shown as affected by 2009 Wis. Act 94, s. 120. Act 94, s. 120, did not take cognizance of the repeal and recreation of the provisions in compliance with that order, whether there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

(f) If the summary prepared under par. (e) indicates that the court reviewed the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child’s parent, guardian, and legal custodian; [and] the child’s foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; [i] of the time, place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they shall have a right to be heard at the hearing as provided in par. (c). (1) and shall notify] the child’s counsel, the child’s guardian ad

litum, and the child’s court-appointed special advocate; the agency that prepared the permanency plan; the person representing the interests of the public; and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child’s Indian custodian and tribe of the [date, time, and place,] and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they may have an opportunity to be heard at the hearing as provided in par. (c) 1. [and purpose] of the hearing.

NOTE: Par. (b) is shown as repealed and recreated by 2009 Wis. Act 94, s. 122. Act 94, s. 122, did not take cognizance of the repeal and recreation of the provisions in compliance with that order, whether there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

NOTE: Par. (b) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (ii).

(c) 1. A child, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the hearing under par. (b) shall have a right to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A counsel, guardian ad litem, court-appointed special advocate, agency, or person representing the interests of the public who is provided notice of the hearing under par. (b) may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, operator of a facility, or relative who receives notice of a hearing under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

2. If the child’s permanency plan includes a statement under sub. (4) (i) indicating that the child’s age and developmental level are sufficient for the court to consult with the child regarding the child’s permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court to consult with the child, the court determines that consultation with the child would be in the best interests of the child, the court shall consult with the child, in an age-appropriate and developmentally appropriate manner, regarding the child’s permanency plan and any other matters the court finds appropriate. If none of those circumstances apply, the court may permit the child’s caseworker, the child’s counsel, or, subject to s. 48.235 (3) (a), the child’s guardian ad litem to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, expressing the child’s wishes, goals, and concerns regarding the child’s permanency plan and those matters. If the court permits such a written or oral statement to be made or submitted, the court may nonetheless require the child to be physically present at the hearing.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c). (1) to the court, to the child’s parent, guardian, and legal custodian, to the person representing the interests of the public, to the child’s counsel or guardian ad litem, to the child’s court-appointed special advocate, and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, to the Indian child’s Indian custodian and tribe.

(f) If the summary prepared under par. (e) indicates that the court reviewed the permanency plan and to make the determinations specified in sub. (5) (c) 2. or, if applicable, s. 48.028 (7) (c), and, if the placement is not in compliance with that order, whether there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

NOTE: Par. (d) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (ii).
(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and legal custodian; the child's foster parent, the operator of the facility in which the child is living; or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; the person representing the interests of the public; and, if the child is an Indian child who is placed outside the home of his or her parent or Indian custodian, the Indian child's Indian custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

(6) RULES. The department shall promulgate rules establishing the following:

(a) Procedures for conducting permanency plan reviews.
(b) Requirements for training review panels.
(c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for children to return safely to their homes if they have been placed outside of their homes.
(d) The format for permanency plans and review panel reports.
(e) Standards and guidelines for decisions regarding the placement of children.


NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 222, 499 N.W.2d 219 (Ct. App. 1993).

48.385 Plan for transition to independent living. During the 90 days immediately before a child who is placed in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent attains 18 years of age or, if the child is placed in such a placement under an order under s. 48.357, 48.365, 48.383, 938.355, 938.357, or 938.365 that terminates under s. 48.355 (4) or 938.355 (4) after the child attains 18 years of age, during the 90 days immediately before the termination of the order, the agency primarily responsible for providing services to the child under the order shall provide the child with assistance and support in developing a plan for making the transition from out-of-home care to independent living. The transition plan shall be personalized at the direction of the child, shall be as detailed as the child directs, and shall include specific options for obtaining housing, health care, education, mentoring and continuing support services, and workforce support and employment services.

History: 2009 a. 79; 2011 a. 32.

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), (5), (6) 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 public or private 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. This subsection does not apply to the confidential exchange of information between the police and officials of the tribal school attended by the child if the police determine that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent 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). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78. 48.383

(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 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, subject to official agency policy, provide to the parent, guardian, legal custodian, or expectant mother of a 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 unborn 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 subsection, sub. (3) (b) or (c) 1. or (6), 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.

(a) 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 unborn 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.

(2) The director of state courts or the department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 1. or to the extent permitted under subd. 2.

(c) Upon request of any court assigned to exercise jurisdiction under this paragraph.

(d) Any person who intentionally discloses information in violation of par. (c) may be required to forfeit not more than $5,000.

(3) A record of a court specified in par. (a), or of an expectant mother of an unborn child under s. 48.133, or of an unborn child by the unborn child’s guardian ad litem, shall be in writing and shall describe as specifically as possible all

(e) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(f) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(g) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(h) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(i) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(j) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(k) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(l) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(m) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(n) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(o) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(p) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(q) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(r) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(s) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(t) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(u) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(v) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(w) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(x) The department may allow access to any information transferred to the court under par. (b) only to the extent permitted under subd. 2.

(y) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.

(z) The department, a party to the proceedings in which the electronic records containing that information were created, and the department may transfer to the court information contained in the electronic records of the department that are maintained in the state-wide automated child welfare information system under s. 48.47 (7g). The director of state courts may use the circuit court automated information systems established under s. 758.19 (4) to facilitate the transfer of those electronic records between the court and the department. The director of state courts and the department shall specify what types of information may be transferred under this paragraph.

(aa) The court or the director of state courts may allow access to any information transferred to the court under par. (b) only to the extent that the information may be disclosed under this chapter or ch. 938.
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 inspection that sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall determine whether consent of 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.

6 Records of law enforcement officers and of the court assigned to exercise jurisdiction under this chapter and ch. 938 shall be open for inspection to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 803, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.


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 court records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 320 N.W.2d 275 (Cl. 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 (Cl. App. 1998), 97-0977.

The juvenile court may make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ch. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under s. 48.78 (2) (a) and 918.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M. 2004 WI App 35, 267 N.W.2d 453, 03−3018.

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 actions. 69 Atty. Gen. 57.

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

Corporation counsel may not have access to juvenile cases through the court system’s electronic case management system until such time as the system can be programmed to provide for access only to individual files when access is permitted under this section. The statutes cannot be interpreted to provide corporation counsel unlimited access to juvenile records through the electronic case management system when the general rule is confidentiality and disclosure is the exception granted only after a fact–specific, case–by–case analysis. OAG 07–10.
rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child’s stepparent, or in which the child’s birth parent is a resident of a foreign jurisdiction, the child’s birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of proceedings under this subchapter.

(e) In the case of an Indian child, the consent is given as provided in s. 48.028 (5) (b).

3. If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent’s rights under s. 48.415.


Judicial Council Note, 1990: Subs (3) is repealed and recreated because the so-called substituted judgment permitted therein is bad public policy. New sub. (3) deals with the situation in which there is reason to doubt the competency of a parent who wishes to consent to the termination of his or her parental rights. Any parity or guardian ad litem with reason to doubt such competency is required to so inform the court. The court must then make an inquiry in whatever way is appropriate. This may mean a simple discussion with the person, an examination, the appointment of experts to examine the person, a hearing or whatever seems proper in the discretion of the court. If the court finds the person incapable of making an informed and voluntary termination of parental rights, the court must dismiss the proceeding. If appropriate, an involuntary proceeding may then be commenced. A finding that the parent is competent does not obviate the need for a record that he or she has in fact given informed and voluntary consent prior to entry of a termination order. In Interest of D.L.S., 112 Wis. 2d 180, 196−97 (1983). [Re Order effective Jan. 1, 1990]

The minimum information that must be found on the record to support a finding that a minor parent’s consent was voluntary and informed is set forth. In Interest of D. L. S., 112 Wis. 2d 180, 332 N.W.2d 293 (1983).

48.415 Grounds for involuntary termination of parental rights. At the fact−finding hearing the court or jury shall determine whether grounds exist for the termination of parental rights. If the child is an Indian child, the court or jury shall also determine at the fact−finding hearing whether continued custody of the Indian child by the Indian child’s parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child or the agency responsible for the care of the Indian child under s. 48.028 (4) (c) 1. . If whether active efforts under s. 48.028 (4) (e) 2. have been made to prevent the breakup of the Indian child’s family and whether those efforts have proved unsuccessful, unless partial summary judgment on the grounds for termination of parental rights is granted, in which case the court shall make those determinations at the dispositional hearing. Grounds for termination of parental rights shall be one of the following:

1. ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

1. That the child has been left without provision for the child’s care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent.

2. That the child has been left by the parent without provision for the child’s care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), or death.

3. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent aban-

4. The child was under one year of age or has found that the parent aban-

donated the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That the child has been placed, or continued in a placement, outside the parent’s home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2. or 3. The time periods under par. (a) 2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child’s age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

1m RELINQUISHMENT. Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the parent has relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

2. CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.347, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. In this subdivision, “reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that
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the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 9–month period following the fact–finding hearing under s. 48.424.

(3m) That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), 938.356 (2), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child’s placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b), developmental disability as defined in s. 55.01 (2), or other like incapacities, as defined in s. 55.01 (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2);

(b) That at least one year has elapsed since the order denying physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) CHILDABUSE. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That a child has previously been removed from the parent’s home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13 (3) or (3m).

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have not had a substantial parental relationship with the child.

(b) In this subsection, “substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the parent has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(7) INCESTUOUS PARENTHOOD. Incestuous parents, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child’s other parent in a degree of kinship closer than 2nd cousin.

(8) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of a first–degree intentional homicide in violation of s. 940.01, first–degree reckless homicide in violation of s. 940.02 or 2nd–degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first–degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

(9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact–finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) or 948.085, the mother of the child may be heard on her desire for the termination of the father’s parental rights.

(9m) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON’S CHILDREN. (a) Commission of a serious felony against one of the person’s children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, “serious felony” means any of the following:

1. The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. a. The commission of a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) or (a) or (3) (a), 948.05, 948.051, 948.06 or 948.08, or a violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

b. A violation of the law of any other state or federal law, if that violation would be a violation listed under sub. 2. a. if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD. Prior involuntary termination of parental rights
to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child.

(b) That, within 3 years prior to the date the court adjudged the child to be in need of protection or services as specified in par. (a) or (b), a petition was filed for the birth of a petition as specified in par. (a), within 3 years prior to the date of birth of the child, a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

History:


Consent by the mother subsequent to the birth of the child to termination of her parental rights in its best interests so that the child might be placed for adoption constitutes an abandonment, and although she was permitted to withdraw that consent by a prior decision of the supreme court, the best interests of the child require modification of the court order to effect a termination of her parental rights. Lewis v. Lutheran Social Services, 68 Wis. 2d 36, 227 N.W.2d 643 (1975).

A termination order was not supported by sufficient findings when the findings made by the county to the effect that the child should be terminated were not supported by a finding of the best interests of the child. Termination of Parental Rights to T. M. 100 Wis. 2d 681, 303 N.W.2d 584 (1981).

A parent has constitutionally protected rights to the care, custody, and management of a child. In Interest of J. L. 102 Wis. 2d 118, 306 N.W.2d 46 (1981).

The dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The finding that the oral notice was given is not required in later termination proceedings. If abandonment is found, termination is still discretionary. In Interest of J. L. 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

The period of time allotted for the parents to make arrangements for the nonnatural parent to become a legal parent is 3 years. In Interest of T. M. 170 Wis. 2d 313, 488 N.W.2d 133 (Ct. App. 1991).

A developmentally disabled father’s allegation that the county, in violation of the Americans with Disabilities Act, did not take into account his disability in attempting to prevent him from seeing his child was dismissed. A developmentally disabled father’s allegation that the county, in violation of the Americans with Disabilities Act, did not take into account his disability in attempting to prevent him from seeing his child was dismissed. In Interest of D.P. 199 Wis. 2d 259, 483 N.W.2d 591 (Ct. App. 1992).

While the CHIPS judge must notify the parents of possible termination grounds in the written dispositional order and repeat that information orally to any parent present in person, the oral notices given is not required in later termination proceedings. In Interest of D.P. 170 Wis. 2d 313, 488 N.W.2d 133 (Ct. App. 1991).

A parent’s assertion of juvenile rights to another child in an involuntary termination proceeding, but does not allege that the court-ordered conditions of return are fundamentally unfair to terminate parental rights based solely on a parent’s status as a victim of incest. Monroe County Districts v. Kelbi D. 2004 WI 27, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2680.

In applied as this may be, incestuous parenthood ground under sub. (7) is not narrowed to mean that the court-ordered conditions of return are fundamentally unfair to terminate parental rights based solely on a parent’s status as a victim of incest. Monroe County Districts v. Kelbi D. 2004 WI 27, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2680.

Jennifer V.’s holding is limited to appeals based on guilt or innocence. When a parent’s pleading denies any issues of guilt or nonguilt, any final judgment of conviction in sub. (9m) means the judgment of conviction entered by the trial court, either after a verdict of guilty by the jury, a finding of guilty by the court when a jury is waived, or a plea of guilty or no contest. Reynolds F. v. Christl M. 2001 WI App 106, 272 Wis. 2d 816, 684 N.W.2d 138, 03−2687.

Partial summary judgment may be granted in the unfitness phase of a termination case if the moving party establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. As the court in the unfitness phase of a termination case, it is not required to find a heightened burden of proof specified in s. 48.31 (1) and required by due process, the moving party is entitled to judgment as a matter of law. Steven V. v. Kelley H. 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2680.

A mother’s criminal offenses and sentences were relevant to whether she had failed to establish a substantial parental relationship with her children under sub. 6d. State v. Quinnsanna D. 2002 WI App 73, 259 W.2d 293, 656 N.W.2d 752, 02−1919.

When applied, the court-ordered conditions of return are not so prejudicial as to outweigh their probative value when the information would lead the jury to an understanding of why children were removed from the parent’s home. Reynolds F. v. Christl M. 2004 WI App 106, 272 Wis. 2d 707, 684 N.W.2d 138, 03−2687.

Partial summary judgment may be granted in the unfitness phase of a termination case if the moving party establishes that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Steven V. v. Kelley H. 2004 WI 47, 271 Wis. 2d 1, 678 N.W.2d 831, 02−2680.

When a parent is incarcerated and there is no certainty of parental termination is that the child continues to be in need of protection or services solely because of the parent’s incarceration, sub. (2) requires that the court-ordered conditions of return are tailored to the particular needs of the parent and child. A parent’s incarceration is not a sufficient basis to terminate parental rights. Other factors must be considered, such as the parent’s relationship with the child before incarceration, the circumstances surrounding the parent’s incarceration, the nature of the crime committed, the length and type of sentence imposed, the parent’s level of cooperation with the responsible agency, the parent’s willingness and ability to correct any effects of the child’s behavior, and the best interests of the child. Kenosha County Department of Human Services v. Jordie W. 2006 WI 93, 293 Wis. 2d 510, 756 N.W.2d 845, 05−0020.

Sub. (10) b requires that within 5 years prior to a parent’s judgment against the mother on the issue of abandonment without first taking evidentiary, the court circuit did not make the finding. The order was subject to a harmless error analysis. Jennifer V. v. Corey J. 2005 WI App 24, 259 Wis. 2d 429, 655 N.W.2d 752, 02−1919.

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efforts undertaken after he discovers that he is the father but before the circuit court adjudicates the grounds of the termination proceeding. State v. Bobby G. 2007 WI 77, 301 Wis. 2d 531, 734 N.W.2d 81, 06-0066.

The 3-month abandonment ground under sub. (1) (a) is effectively an exception to the more general requirement of 6 months of abandonment under sub. (1) (a). The 3-month abandonment period is justified by the shorter abandonment period specified in s. 48.417.

When there is an active CHIPS order, it is a given that the child has been facing some kind of peril, and a shorter abandonment period is therefore appropriate and in the child’s best interests. When a CHIPS order has been terminated or allowed to lapse, it is reasonable to assume that the parental situation has changed and the reason for the shorter abandonment period is no longer present. Heather B. v. Jennifer B. 2011 WI App 26, 331 Wis. 2d 666, 794 N.W.2d 800, 10-2528.

Sub. (1) (a) 2. requires that the 3-month abandonment period fall within the duration of a CHIPs-based placement of the child outside the parent’s home. Heather B. v. Jennifer B. 2011 WI App 26, 331 Wis. 2d 666, 794 N.W.2d 800, 10-2528.

Under sub. (a), (b), a fact-finder must look to the totality-of-the-circumstances to determine a parent’s assumed parental responsibility. The phrase “have not or does not direct the fact-finder to consider only a limited time period. Rather, the statute, the child’s permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

(b) The agency primarily responsible for providing services to the family under a court order, if required under s. 48.355 (2) (b) 6, to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child’s permanency plan, the services necessary for the safe return of the child to his or her home.

(c) In the case of an Indian child, the agency primarily responsible for providing services to the Indian child and the family under a court order, if required under s. 48.355 (2) (b) 6v, to make active efforts under s. 48.028 (4) (d) 2, to prevent the breakup of the Indian child’s family, has not provided to the Indian child’s family, consistent with the child’s permanency plan, the services necessary to prevent the breakup of the Indian child’s family.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

(3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425 (1) (f) that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

(4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who files the petition shall notify the department of that filing or joinder. History: 1997 a. 237; 2001 a. 109; 2005 a. 277; 2007 a. 20, 116; 2009 a. 79, 94.

48.42 Procedure. (1) PETITION. A petition for the proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child’s parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled “In the interest of _______ (child’s name), a person under the age of 18” and shall set forth with specificity:

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

(b) The names and addresses of the child’s parent or parents, guardian and legal custodian.
required to file a declaration of paternal interest under s. 48.025. The notice shall be sent by certified mail to the last-known address of the alleged father.

(c) If an affidavit under par. (a) is not filed with the petition, notice shall be given to an alleged father under sub. (2).

(1m) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under sub. (1) includes a statement of the grounds for involuntary termination of parental rights under sub. (1) (c) 2., the petitioner may, at the time the petition under sub. (1) is filed, also petition the court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition under sub. (1). Any petition under this paragraph shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(b) Subject to par. (e), the court may issue the temporary order ex parte or may refuse to issue the temporary order and hold a hearing on whether to issue an injunction. The temporary order is in effect until a hearing is held on the issuance of an injunction. The court shall hold a hearing on the issuance of an injunction on or before the date of the hearing on the petition to terminate parental rights under s. 48.422 (1).

(c) Notwithstanding any other order under s. 48.355 (3), the court, subject to par. (e), may grant an injunction prohibiting the respondent from visiting or contacting the child if the court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the court dismisses the petition for termination of parental rights under s. 48.427 (2) or issues an order terminating parental rights under s. 48.427 (3).

(d) A temporary order under par. (b) or an injunction under par. (c) suspends the portion of any order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 setting rules of parental visitation until the termination of the temporary order under par. (b) or injunction under par. (c).

(e) 1. Except as provided in subd. 2., the court shall issue a temporary order and injunction prohibiting a parent of a child from visitation or contact with the 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.

2. Subdivision 1. does not apply if the court determines by clear and convincing evidence that visitation or contact would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(2) WHO MUST BE SUMMONED. Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:

(a) The parent or parents of the child, unless the child’s parent has waived the right to notice under s. 48.41 (2) (d).

(b) Except as provided in par. (bm), if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established:

1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025 before the birth of the child or within 14 days after the birth of the child.

2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice under s. 48.41 (2) (e).

3. A person who has lived in a familial relationship with the child and who may be the father of the child.
(bm) If the child is a nonmarital child who is under one year of age at the time the petition is filed and who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established and if an affidavit under sub. (1g) (a) is filed with the petition:

1. A person who has filed an unrevoked declaration of paternal interest under s. 48.025 before the birth of the child, within 14 days after the birth of the child, or within 21 days after a notice under sub. (1g) (b) is mailed, whichever is later.

2. A person who has lived in a familial relationship with the child and who may be the father of the child.

(c) The guardian, guardian ad litem, legal custodian, and Indian custodian of the child.

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents who shall be provided notice as required under sub. (2g).

(e) To the child if the child is 12 years of age or older.

(2g) NOTICE REQUIRED. (a) In addition to causing the summons to be served as required under sub. (2), the petitioner shall also notify any foster parent or other physical custodian described in s. 48.62 (2) of the child of all hearings on the petition. The first notice to any foster parent or other physical custodian described in s. 48.62 (2) shall be written, shall have a copy of the petition attached to it, and shall state the nature, location, date, and time of the initial hearing and shall be mailed to the last−known address of the foster parent or other physical custodian described in s. 48.62 (2). Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(ag) In the case of an involuntary termination of parental rights to a child whom the petitioner knows or has reason to know is an Indian child, the petitioner shall cause the summons and petition to be served on the Indian child’s parent and Indian custodian in the manner specified in s. 48.028 (4) (a). In like manner, the petitioner shall also notify the Indian child’s tribe of all hearings on the petition. The first notice to an Indian child’s tribe shall be written, shall have a copy of the petition attached to it, and shall state the nature, location, date, and time of the initial hearing. No hearing may be held on the petition until at least 10 days after receipt of notice of the hearing by the Indian child’s parent, Indian custodian, or tribe or, if the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian child’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(amm) The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (a) a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (a) shall have a copy of the petition attached to it, and shall state the nature, location, date, and time of the initial hearing. No hearing may be held on the petition until at least 10 days after receipt of notice of the hearing by the Indian child’s parent, Indian custodian, or tribe or, if the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian child’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(b) Failure to give notice under par. (a) to a foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the proceeding. If a foster parent or other physical custodian described in s. 48.62 (2) does not give notice of a hearing under par. (a), that person may request a rehearing on the matter at any time prior to the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall order a rehearing.

(2m) NOTICE NOT REQUIRED. (a) Parent as a result of sexual assault. Except as provided in this paragraph, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2), 948.025, or 948.085 if a physician attests to his or her belief that a sexual assault as specified in this paragraph has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this paragraph for conduct which may have led to the child’s conception. A person who under this paragraph is not given notice does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations. This paragraph does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

(b) Parent of nonmarital child. A person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established, by virtue of the fact that he has engaged in sexual intercourse with the mother of the child, is considered to be on notice that a pregnancy and a termination of parental rights proceeding concerning the child may occur, and has the duty to protect his own rights and interests. He is therefore entitled to actual notice of such a proceeding only as provided in sub. (2) (b) or (bm). A person who is not entitled to notice under sub. (2) (b) or (bm) does not have standing to appear and contest a petition for the termination of his parental rights, present evidence relevant to the issue of disposition, or make alternative dispositional recommendations.

(3) CONTENTS OF SUMMONS. The summons shall:

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

(b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.

(c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.

(d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered for the right to pursue such relief to be preserved.

(4) MANNER OF SERVING SUMMONS AND PETITION. (a) Personal service. Except as provided in this paragraph, par. (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 7 days before the date of the hearing. Service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

(b) Constructive notice. 1. If with reasonable diligence a party specified in sub. (2) cannot be served under par. (a), service shall be made by publication of the notice under subd. 4

1m. If the child’s custody was relinquished under s. 48.195, service to the parents of the child may be made by publication of the notice under subd. 4.

2. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and paternity has not been acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

3. At the time the petition is filed, the petitioner may move the court for an order waiving the requirement of constructive notice to a person who, although his identity is unknown, may be the father of a nonmarital child.

4. A notice published under this subsection shall be published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner or court shall consider the residence of the party, if known.
or the residence of the relatives of the party, if known, or the last−known location of the party. If the party's post−office address is known or can, with due diligence, be ascertained, a copy of the summons and petition shall be mailed to the party upon or immediately prior to the first publication. The mailing may be omitted if the petitioner shows that the post−office address cannot be obtained with due diligence. Except as provided in subd. 5., the notice shall include the date, place and circuit court branch for the hearing, the court file number, the name, address and telephone number of the petitioner's attorney and information the court determines to be necessary to give effective notice to the party or parties. Such information shall include the following, if known:

a. The name of the party or parties to whom notice is being given;

b. A description of the party or parties;

c. The former address of the party or parties;

d. The approximate date and place of conception of the child;

e. The date and place of birth of the child.

5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the child unless the court finds that inclusion of the child's name is essential to give effective notice to the father.

(c) The notice under par. (a) or (b) shall also inform the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;

2. Of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her;

3. That if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after judgment is entered for the right to pursue such relief to be preserved.

5. PENALTY. Any person who knowingly and willfully makes or causes to be made any false statement or representation of a material fact in the course of a proceeding under this section with an intent to deceive or mislead the court for the purpose of preventing a person who is entitled to receive notice of a proceeding under this section from receiving notice may be fined not more than $10,000 or imprisoned for not more than 9 months, or both.

The doctrines of claims and issue preclusion may apply in TPR cases. Brown County Department of Human Services v. Terrance M. 2005 WI App 57, 280 Wis. 2d 396, 694 N.W.2d 438, 04−2379.

48.422 Hearing on the petition. (1) Except as provided in s. 48.42 (2g) (ag), the hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub. (4) and s. 48.423.

(2) Except as provided in s. 48.42 (2g) (ag), if the petition is contested the court shall set a date for a fact−finding hearing to be held within 45 days after the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.

(3) If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).

(4) Any party who is necessary to the proceeding or whose rights may be affected by an order terminating parental rights shall be granted a jury trial upon request if the request is made before the end of the initial hearing on the petition.

(5) Any nonpetitioning party, including the child, shall be granted a continuance of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.

(6) (a) In the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and for whom paternity has not been established, or for whom a declaration of paternal interest has not been filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g) (b) is mailed, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall adjourn the hearing and order appropriate notice to be given.

(b) If the court determines that an unknown person may be the father of the child and notice to that person has not been waived under s. 48.42 (4) (b), the court shall determine whether constructive notice will substantially increase the likelihood of notice to that person. If the court determines that it would substantially increase the likelihood of notice and the petitioner has not already caused the notice to be published or the court determines that the publication used was not sufficient, the court shall adjourn the hearing for a period not to exceed 30 days and order constructive notice under s. 48.42 (4) (b). If the court determines that constructive notice will not substantially increase the likelihood of notice to that person, the court shall order that the hearing proceed.

(c) If paternity is adjudicated under this subchapter and parental rights are not terminated, the court may make and enforce such orders for the suitable care, custody and support of the child as a court having jurisdiction over actions affecting the family may make under ch. 767. If there is a finding by the court that the child is in need of protection or services, the court may make dispositional orders under s. 48.345.

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

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.
(b) Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.424 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913 (4).

Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditionally in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amendment to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1). This paragraph does not apply if the petition was filed with a petition for adoption placement under s. 48.837 (2).

(bn) Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of s. 48.63 (3) (b) 5. Upon a finding of coercion, the court shall dismiss the petition.

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

(8) If the petition for termination of parental rights is filed by an agency numbered in s. 48.069 (1) or (2), the court shall order the agency to file a report with the court as provided in s. 48.425 (1), except that, if the child is an Indian child, the court may order the agency or request the tribal child welfare department of the Indian child’s tribe to file that report.

(9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.814 (1) (a) to (p), known to have provided care to the birth parent or parents in any form of the child’s life, to provide the court with any health care records of the birth parent or parents which are relevant to the child’s medical condition or genetic history. A court order for the release of alcohol or drug abuse treatment records subject to 21 USC 1175 or 42 USC 4582 shall comply with 42 CFR 2.


The court erred by failing to inform parents of the right to jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W. 2d 410 (1984).

Concurrent TPR/Adoption proceedings under s. 48.835 are subject to the requirements under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W. 2d 359 (Ct. App. 1992).

A court’s failure to inform parents of their rights under this section is not reversible error absent prejudice to the parents. Interest of Robert D. 181 Wis. 2d 887, 512 N.W. 2d 842, 07−1494.

In order for no contest pleas at the grounds stage to be entered knowingly and intelligently, parents must understand that acceptance of their plea will result in a finding of parental unfitness. Sub. (7) requires, at the very least, that a court must inform the parent that at the 2nd step of the process, the court will hear evidence related to the disposition and then will either terminate the parent’s rights or dismiss the petition if the evidence does not warrant termination. Additionally, the court must inform the parent that the best interests of the child shall be the prevailing factor considered by the court in determining the disposition. Oneida County Department of Social Services v. Theresie S. 2008 WI App 159, 314 Wis. 2d 495, 762 N.W. 2d 122, 08−1126.


48.423 Rights of persons alleging paternity. (1) RIGHTS TO PATERNITY DETERMINATION. If a person appears at the hearing and claims that he is the father of the child, the court shall set a date for a hearing on the issue of paternity or, if all parties to the action appear, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the person claiming to be the father of the child of any right to counsel under s. 48.23. The person claiming to be the father of the child must prove paternity by clear and convincing evidence. A person who establishes his or her paternity of the child under this section has the right to participate in the termination of parental rights proceeding only if the person meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2) (b) or (bm).

(2) RIGHTS OF OUT−OF−STATE FATHERS. A person who may be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established may contest the petition, present evidence relevant to the issue of paternity, and make other dispositional recommendations if the person appears at the hearing, establishes paternity under sub. (1), and proves all of the following by a preponderance of the evidence:

(a) That the person resides and has resided in another state where the mother of the child resided or was located at the time of or after the conception of the child.

(b) That the mother left the state without notifying or informing that person that she could be located in this state.

(c) That the person attempted to locate the mother through every reasonable means, but did not know or have reason to know that the mother was residing or located in this state.

(d) That the person has complied with the requirements of the state where the mother previously resided or was located to protect and preserve his or her paternal interests in matters affecting the child.


Putative father’s right to custody of his child. 1971 WL 1262.

48.424 Fact−finding hearing. (1) The purpose of the fact−finding hearing is to determine in cases in which the petition was...
The fact-finding hearing shall be conducted according to the procedure specified in s. 48.31 except as follows:

(a) The court may exclude the child from the hearing.

(b) The hearing shall be closed to the public.

If the facts are determined by a jury, the jury may only decide whether any grounds for the termination of parental rights have been proved and whether the allegations specified in s. 48.42 (1) (e) have been proved in cases involving the involuntary termination of parental rights to an Indian child. The court shall decide what disposition is in the best interest of the child.

Court report by an agency. (1) If the court orders an agency enumerated under s. 48.069 (1) or (2) to file a report under s. 48.422 (8) or 48.424 (4) (b) or requests the tribal child welfare department of an Indian child’s tribe to file such a report, the agency or tribal child welfare department, if that department consents, shall file a report with the court which shall include:

(a) The social history of the child.

(2) A medical record of the child on a form provided by the department which shall include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child’s grandparents, aunts, uncles, brothers and sisters.

2. A report of any medical examination which either birth parent had within one year before the date of the petition.

3. A report describing the child’s prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.

(3) A statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent’s response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the person or agency has taken to effect this return. If a permanency plan has previously been prepared for the child, the report shall also include specific information showing that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child’s permanency plan, including, if appropriate, through an out-of-state placement.

(cm) If the petition is seeking the involuntary termination of parental rights to an Indian child, specific information showing that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the Indian child has previously been adjudicated to be in need of protection or services, specific information showing that active efforts under s. 48.028 (4) (e) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful.

(d) A statement of other appropriate services, if any, which might allow the child to return safely to the home of the parent.

(e) A statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child’s parents or the child’s only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. or (am) and include a presentation of the factors that might prevent adoption, those that would facilitate adoption, and the agency that would be responsible for accomplishing the adoption.

(g) If a agency designated under s. 48.427 (3m) (a) 1. to 4. or (am) determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child, a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child, or a recommendation that a guardian be appointed for the child under s. 48.977 (2).

(1m) The agency required under sub. (1) to file the report shall prepare the medical record within 60 days after the date of the petition for the termination of parental rights.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
(2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

(3) The court may order a report as specified under this section to be prepared by an agency in those cases where the petition is filed by someone other than an agency.


48.426 Standard and factors. (1) COURT CONSIDERATIONS
In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child’s adoption after termination.
(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.
(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.
(d) The wishes of the child.
(e) The duration of the separation of the parent from the child.
(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child’s current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c. 330.

When grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was error to exclude their testimony in determining the child’s best interest. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

A termination of parental rights works a legal severance of the relationship between the child and the child’s birth family. Sub. (3) (c) requires an examination of the harmful effect of the legal severance on the child’s relationships with the birth family. The court may consider the interests of any adoptive parent in determining the best interests of the child. In re T. 1986 Wis. App. LEXIS 347, 456 N.W.2d 154 (Ct. App. 1990).

48.427 Dispositions. (1) Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition, the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(1m) In addition to any evidence presented under sub. (1), the court shall give the foster parent or other physical custodian described in s. 48.62 (2) of the child a right to be heard at the dispositional hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition. A foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall do one of the following:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e).
2. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.
3. A relative with whom the child resides, if the relative has a legal interest in the child.
4. The department.
5. An individual in whose home the child resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.
6. A county department authorized to accept guardianship under s. 48.57 (1) (h) for the placement of the child for adoption by the child’s foster parent, if the county department has agreed to accept guardianship and custody of the child and the foster parent has agreed to adopt the child.
7. An individual in whose home the child resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.
8. A county department authorized to accept guardianship under s. 48.57 (1) (h) for the placement of the child for adoption by the child’s foster parent, if the county department has agreed to accept guardianship and custody of the child and the foster parent has agreed to adopt the child.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(c) Appoint a guardian under s. 48.977 and transfer guardianship and custody of the child to the guardian.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m) (a) or (b).

If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

(5) In placing an Indian child in a preadoptive placement following a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian child in sustaining care under sub. (4), the court may appoint a guardian under s. 48.977 as described in s. 48.977 (7) (b) or, if applicable, s. 48.977 (7) (c), unless the court or agency finds good cause, as described in s. 48.977 (7) (c), for departing from that order.

(6) If an order is entered under sub. (3), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432, 48.433 and 48.434.

(b) Forward to the department:

1. The name and date of birth of the child whose birth parent’s rights have been terminated.
2. The names and current addresses of the child’s birth parents, guardian and legal custodian.
3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).
4. If the court knows or has reason to know that the child is an Indian child, information relating to the child’s membership or eligibility for membership in an Indian tribe.

(7) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10).


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(b) In addition to the notice permitted under par. (a), any writen order under sub. (3) may notify the parent or parents of the information specified in par. (a).


(3) Before the department in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster parent or kinship care relative with whom the child has resided for 6 months or longer. In placing an Indian child in sustaining care, the court shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order. Pursuant to the placement, that licensed foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(4) The department in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster parent or kinship care relative with whom the child has resided for 6 months or longer. In placing an Indian child in sustaining care, the court shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order. Pursuant to the placement, that licensed foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(5) Before the department in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster parent or kinship care relative with whom the child has resided for 6 months or longer. In placing an Indian child in sustaining care, the court shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order. Pursuant to the placement, that licensed foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(6) The authority to act as the child’s parent under subch. V of ch. 115 and s. 118.125.

(7) A court may place a child in sustaining care if the court has determined that the child has been abandoned, neglected, or abused, and the child is in need of continued care and treatment.

(8) The court shall enter a judgment setting forth its findings and the reasons for the disposition chosen. If the court dismisses the petition under sub. (1) or (am), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship of custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

(b) If the department or a county department receives guardianship or custody of the child under par. (a), an order directing the department or county department as required under 42 USC 672 (a) (2) and assigning the department or county department primary responsibility for providing services to the child.

(c) If an agency receives custody of the child under par. (a), the child’s permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.

(e) The authority to act as the child’s parent under subch. V of ch. 115 and s. 118.125.

(f) Before a licensed foster parent or kinship care relative may be appointed as a sustaining parent, the foster parent or kinship care relative shall execute a contract with the agency responsible for providing services to the child, in which the foster parent or kinship care relative agrees to provide care for the child until the child’s 18th birthday unless the placement order is changed by the court because the court finds that the sustaining parents are no longer able or willing to provide the sustaining care or the court finds that the behavior of the sustaining parents toward the child would constitute grounds for the termination of parental rights if the sustaining parent was the birth parent of the child.

(g) Except as provided in par. (b), the court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

(h) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible.

(i) If an agency receives custody of the child under par. (a), the child’s permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan, the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.
(cm) If a permanency plan has previously been prepared for the child, a finding as to whether the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goal of the child’s permanency plan, including, if appropriate, through an out−of−state placement. The court shall make the findings specified in this paragraph on a case−by−case basis and shall consider circumstances specific to the child and shall not base its decision or reference the specific information on which those findings are based in the order. An order that merely references this paragraph without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) A finding that the termination of parental rights is in the best interests of the child.

(2) An order terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are terminated and the child and between the child and all persons whose relationship to the child is derived through that parent, except as follows:

(a) The relationship between the child and his or her siblings is not severed until that relationship is extinguished by an order of adoption as provided in s. 48.92 (2).

(b) A relative whose relationship to the child is derived through the parent whose parental rights are terminated is considered to be a relative of the child for purposes of placement of, and permanency planning for, the child until that relationship is extinguished by an order of adoption as provided in s. 48.92 (2).

(3) If only one parent consents under s. 48.41 or if the grounds specified in s. 48.415 are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent.

(4) A certified copy of the order terminating parental rights shall be furnished by the court to the agency given guardianship for placement for adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care and to the person appointed as the guardian of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy of the child’s birth certificate and a transcript of the testimony in the termination of parental rights hearing to the same person or agency.

(5) If the custodian specified in sub. (1) (a) is an agency, the agency shall report to the court, in an age−appropriate and developmentally appropriate manner, regarding the child’s permanency plan and those matters. If the court permits such non−appearance at the hearing, or to submit a written statement prior to the hearing, the testimony in the termination of parental rights hearing to the agency representing a person during a proceeding under this subchapter shall continue representation of that person to a child to an Indian child, to the child’s tribe.

(bm) If the order under sub. (1) involuntarily terminated parental rights to an Indian child, the court shall also provide notice of the hearing under par. (b) to the Indian child’s tribe in the manner specified in s. 48.028 (4) (a). No hearing may be held under par. (b) until at least 10 days after receipt of notice of the hearing by the Indian child’s tribe or, if the identity or location of the tribe to which the Indian child’s tribe cannot be determined, until at least 15 days after receipt of notice of the hearing by the U.S. secretary of the interior.

NOTE: Sub. (5m) is shown as repealed and recreated by 2009 Wis. Act 94, s. 158. Act 94, s. 158, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 91. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 158, but that was deleted or replaced by Act 79, s. 91, is shown in square brackets and material that was inserted by Act 79 but not included in Act 94 is shown in curly brackets. Corrective legislation is pending.

(6) (a) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) (a) according to the procedure specified in s. 809.107 and are subject to a petition for rehearing or a motion for relief only as provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.028 (5) (c) and (6). The attorney representing a person during a proceeding under this subchapter shall continue representation of that person by filing a notice of intent to appeal under s. 809.107 (2), unless the attorney has been previously discharged during the proceeding by the person or by the trial court.

(b) The mother of a child who completes an affidavit under s. 48.42 (1g) may not collaterally attack a judgment terminating...
parental rights on the basis that the father of the child was not correctly identified.

(c) Except as provided in s. 48.028 (5) (c) and (6), in no event may any person, for any reason, collaterally attack a judgment terminating parental rights more than one year after the date on which the period for filing an appeal from the judgment has expired, or more than one year after the date on which all appeals from the judgment, if any were filed, have been decided, whichever is later.

(6m) If a person whose parental rights are terminated is present in court when the court grants the order terminating those rights, the court shall provide written notification to the person of the time periods for appeal of the judgment. The person shall sign the written notification, indicating that he or she has been notified of the time periods for filing an appeal under ss. 808.04 (7m) and 809.107. The person’s counsel shall file a copy of the signed, written notification with the court on the date on which the judgment is granted.

(7) If the agency specified under sub. (1) (a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department, except that the department may not petition the court to transfer to a county department legal custody of a child who was initially taken into custody under s. 48.195 (1). The court shall transfer the child’s legal custody to the county department specified in the petition. The department shall remain the child’s guardian.


The appeal process in a termination case must be commenced within 30 days after the order is entered. In Interest of J.D. 106 Wis. 2d 126, 315 N.W.2d 365 (1982).

Termination has the same effect on relationships between members of the biological parents' families and the child as it has on the parent-child relationship. Equitable considerations did not form a basis to allow biological grandparents to obtain visitation rights from generation to generation. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998), 97−3595.

48.432 Access to medical information. (1) In this section:

(a) “Adoptee” means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(aq) “Agency” means a county department or a licensed child welfare agency.

(am) “Birth parent” means either:

1. The mother designated on the individual’s or adoptee’s original birth certificate.

2. One of the following:
   a. The adjudicated father.
   b. If there is no adjudicated father, the husband of the mother at the time the individual or adoptee is conceived or born, or when the parents intermarried under s. 767.803.

(b) “Individual” means a person whose birth parent’s rights have been terminated in this state at any time.

(2) (a) The department, or agency contracted with under sub. (9), shall maintain all information obtained under s. 48.427 (6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child’s birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3) (a) The department, or agency contracted with under sub. (9), shall release the medical information under sub. (2) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.

2. An adoptive parent of an adoptee.

3. The guardian or legal custodian of an individual or adoptee.

4. The offspring of an individual or adoptee if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual for adoption.

(b) Before releasing the information under par. (a), the department, or agency contracted with under sub. (9), shall delete the name and address of the birth parent and the identity of any provider of health care to the individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than $150 and may be waived by the department or agency.

(d) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual whose birth parent’s rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such an individual or adoptee, and the information is not on file with the department, or agency contracted with under sub. (9), the person may request that the department or agency conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement from a physician certifying either that the individual or adoptee has or may have acquired a genetically transferable disease or that the individual’s or adoptee’s medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department, or agency contracted with under sub. (9), shall undertake a diligent search for the individual’s or adoptee’s parents.

(e) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (9), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed $100 for either birth parent, it shall notify the requester. No fee in excess of $100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department, or agency contracted with under sub. (9), shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent’s identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department, or agency contracted with under sub. (9), shall notify the requester, without disclosing the birth parent’s identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7) (a) If the department or another agency that maintains records relating to the adoption of an adoptee or the termination of parental rights receives a report from a physician stating that a birth parent or another offspring of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the individual or adoptee of the existence of the disease, if he or she is 18 years of age or older, or notify the individual’s or adoptee’s guardian, custodian or adoptive parent if the individual or adoptee is under age 18.

(b) If the department or agency receives a report from a physician that an individual or adoptee has or may have a
genetically transmissible disease, the department or agency shall notify the individual’s or adoptee’s birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(8m) The department, or agency contracted with under sub. (9), shall give priority to all of the following:

(a) Reports filed by physicians under sub. (7).

(b) A request or a court order for medical or genetic information under subs. (3) and (4) if it is accompanied by a statement from a physician certifying that a child has acquired or may have a genetically transmissible disease.

(c) Any reports and requests specified by the department by rule.

(9) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.


Cross-reference: See also ch. DCF 53, Wis. adm. code.

48.433 Access to identifying information about parents. (1) In this section:

(a) “Agency” has the meaning given under s. 48.432 (1) (ag).

(b) “Birth parent” has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department, or agency contracted with under sub. (11), an affidavit authorizing the department or agency to provide the child with his or her original birth certificate and with any other available information about the birth parent’s identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department or agency in writing.

(3) Any person 18 years of age or over whose birth parent’s rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department, or agency contracted with under sub. (11), to provide the person with the following:

(a) The person’s original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department, or agency contracted with under sub. (11), shall require the requester to provide adequate identification.

(5) The department, or agency contracted with under sub. (11), shall disclose the requested information in either of the following circumstances:

(a) The department, or agency contracted with under sub. (11), has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6) (a) If the department, or agency contracted with under sub. (11), does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request, unless the search falls within one of the exceptions established by the department by rule. If any information has been provided under sub. (5), the department or agency is not required to conduct a search.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (11), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed $100 for either birth parent, it shall notify the requester. No fee in excess of $100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7) (a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.

2. The date of the request.

3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department, or agency contracted with under sub. (11), shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department, or agency contracted with under sub. (11), shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department, or agency contracted with under sub. (11), may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8) (a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department, or agency contracted with under sub. (11), shall so inform the requester. The department or agency may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, or agency contracted with under sub. (11), in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department or agency.

(8m) If the department, or agency contracted with under sub. (11), may not disclose the information requested under this section, it shall provide the requester with any nonidentifying social history information about either of the birth parents that it has on file.

(9) The requester may petition the circuit court to order the department or agency designated by the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement
of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.


Cross-reference: See also ch. DCF 53, Wis. adm. code.

48.434 Release of identifying information by an agency when authorization is granted. (1) DEFINITIONS

In this section:

(a) “Adoptive parent” means a person who has adopted a child in this state or who has adopted in another state a child who was placed for adoption with that person in this state.

(b) “Birth parent” has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the birth parent’s identity and location to one or both adoptive parents of the child.

(3) Any adoptive parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the adoptive parent’s identity and location to one or both birth parents of the child.

(4) A written authorization filed under sub. (2) or (3) may be revoked at any time by notifying the agency in writing.

(5) Upon the request of an adoptive parent of a child, the agency receiving the request shall provide to the adoptive parent any available information about the identity and location of a birth parent of the child if the agency has on file an unrevoked written authorization filed by that birth parent under par. (2) authorizing the release of that information to the adoptive parent.

(6) Upon the request of a birth parent of a child, the agency receiving the request shall provide to the birth parent any available information about the identity and location of an adoptive parent of the child if the agency has on file an unrevoked written authorization filed by that adoptive parent under sub. (3) authorizing the release of that information to the birth parent.

(7) This section does not apply if the adopted child is 21 years of age or over.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) An agency may assess a reasonable fee for responding to a request for information or a request to file a written authorization under this section.

(10) No agency may contact any person for the purpose of determining whether the person wishes to authorize the agency to release information under this section. An agency may contact the birth parent or adoptive parent of a child who was adopted before April 29, 1998, one time, by mail, to inform them of the procedure by which identifying information may be released under this section.

(11) A written authorization filed with an agency under this section shall be notarized.

History: 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.
shall, as far as practicable, be the same as in other cases in the court. At the hearing the person may be represented by counsel and may produce and cross-examine witnesses. Any person who fails to comply with any order issued by a court under sub. (1) (a) or (am) or (1m) (a) may be proceeded against for contempt of court. If the person’s conduct involves a crime, the person may be proceeded against under the criminal law.

(3) If at a court hearing that any person 17 years of age or older has violated s. 948.40, the judge shall refer the record to the district attorney for criminal proceedings as may be warranted in the district attorney’s judgment. This subsection does not prevent prosecution of violations of s. 948.40 without the prior reference by the judge to the district attorney, as in other criminal cases.


Involuntary commitment was not authorized by this section. Contemp In Interest of J. S., 137 Wis. 2d 217, 404 N.W.2d 79 (Ct. App. 1987).

SUBCHAPTER X
REHEARING AND APPEAL

48.46 New evidence; relief from judgment terminating parental rights. (1) Except as provided in subs. (1m), (2) and (3), the child whose status is adjudicated by the court, the parent, guardian or legal custodian of that child, the unborn child whose status is adjudicated by the court or the expectant mother of that unborn child may at any time within one year after the entering of the court’s order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court’s original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court’s adjudication. Upon a showing that such evidence exists, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that one-year period a court in this state or in another jurisdiction enters an order granting adoption of the child, in which case a petition under this subsection shall be filed before the date on which the order granting adoption is entered or within 30 days after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, whichever is later.

(2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. A parent who has consented to the termination of his or her parental rights to an Indian child under s. 48.41 (2) (c) or (e) may also move for relief from the judgment under s. 48.028 (5) (c) or (6). Motions under this subsection or s. 48.028 (5) (c) or (6) and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

(3) An adoptive parent who has been granted adoption of a child under s. 48.41 (3) may not petition the court for a rehearing under sub. (1) or move the court under s. 806.07 for relief from the order granting adoption. A petition for termination of parental rights under s. 48.42 and an appeal to the court of appeals shall be the exclusive remedies for an adoptive parent who wishes to end his or her parental relationship with his or her adopted child.


Judicial Council Note, 1988: Sub. (2) limits the remedies for relief from a judgment or order terminating parental rights when the aggrieved party is a parent whose rights were terminated by consent or who has failed to contest the petition. The motion for relief from the judgment or order must be filed within 40 days after entry of the judgment or order terminating parental rights, unless the appellate process is timely initiated, in which case the motion must be filed within 60 days after service of the transcript. The court must grant a rehearing upon a prima facie showing of or more of the following grounds: mistake, inadvertence, surprise or excusable neglect; newly discovered evidence justifying a new hearing under s. 805.15 (3); fraud, misrepresentation or other misconduct of an adverse party; the judgment or order is void; the judgment or order is based upon a prior judgment which has been reversed or otherwise vacated. (Be Order effective Jan. 1, 1989)

Affidavits by a mother that she consented to a termination of her parental rights under duress and by her attorney as to what he expected to prove were not sufficient for a rehearing. Schrond v. Milwaukee County Department of Public Welfare, 53 Wis. 2d 650, 193 N.W.2d 671 (1972).

48.465 Motion for postdisposition relief and appeal. (1) APPEAL BY RESPONDENT. A motion for postdisposition relief from a final order or judgment by a person subject to this chapter shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this chapter or from an order denying a motion for postdisposition relief by a person subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficient of the evidence or issues previously raised.

(2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.14 (4) and in the manner provided for civil appeals under chs. 808 and 809.

(3) EXCEPTIONS. This section does not apply to a termination of parental rights case under s. 48.43 or to a parental consent to abortion case under s. 48.375 (7).


SUBCHAPTER XI
PURPOSE, DUTIES, AND AUTHORITY OF DEPARTMENT

48.468 Purpose of department. The purpose of the department is to focus on integrating the child welfare, child care, and child support services provided in this state and the services provided under the Wisconsin Works program and on increasing collaboration and efficiency in providing those services.

History: 2007 a. 20.

48.47 Duties of department. The department shall do all of the following:

(3) TRUSTEE DUTY. When ordered by the court, act as trustee of funds paid for the support of any child if appointed by the court or a circuit court commissioner under s. 767.82 (7).

(4) EDUCATION AND PREVENTION. Develop and maintain education and prevention programs that the department considers to be proper.

(7) CHILDREN AND YOUTH. (cm) Promote the establishment of adequate child care facilities and services in this state by providing start-up grants to newly operating child care facilities and services under rules promulgated by the department.

(d) With the assistance of the judicial conference, develop simplified forms for filing petitions for child abuse restraining orders and injunctions under s. 813.122. The department shall provide these forms to clergies of circuit court without cost.

(f) As part of its biennial budget request under s. 16.42, submit a request for funding for child abuse prevention efforts in an amount equal to or greater than 1% of the total proposed budget of the department of corrections for the same biennium, as indi-
(h) Contract for the provision of a centralized unit for determining whether the cost of providing care for a child is eligible for reimbursement under 42 USC 670 to 679a.

(A) Statewide Automated Child Welfare Information System. Establish a statewide automated child welfare information system. Notwithstanding ss. 46.2895 (9), 48.396 (1) and (2), 48.78 (2) (a), 48.981 (7), 49.45 (4), 49.83, 51.30, 51.45 (14) (a), 55.22 (3), 146.82, 252.11 (7), 252.15, 253.07 (3) (c), 938.396 (1) (a) and (2), and 938.78 (2) (a), the department may enter the content of any record kept or information received by the department into the statewide automated child welfare information system, and a county department under s. 46.215, 46.22, or 46.23, the department, or any other organization that has entered into an information sharing and access agreement with the department or any of those county departments and that has been approved for access to the statewide automated child welfare information system by the department may have access to information that is maintained in that system, if necessary to enable the county department, the organization to perform its duties under this chapter, ch. 46, 51, 55, or 938, or 42 USC 670 to 679b or to coordinate the delivery of services under this chapter, ch. 46, 51, 55, or 938, or 42 USC 670 to 679b. The department may also transfer information that is maintained in the system to a court under s. 48.396 (3) (b), and the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(39) Adolescent Programming Recommendations. Identify and provide ways to improve coordination of adolescent and parent educational services and programs at the state and local levels by doing all of the following:

(a) Identifying and recommending ways to eliminate government barriers to local development of coordinated educational programs and services for adolescents and parents of adolescents.

(b) Identifying and recommending ways to support and involve parents of adolescents in the planning, coordination and delivery of services for adolescents.

(Foster Care Public Information Campaign. Conduct a foster care public information campaign.

History: 2007 a. 20 s. 804, 805, 807 to 809, 823, 1268 to 1271; 2007 a. 96; 2009 a. 28, 180, 185, 338.

48.48 Authority of department. The department shall have authority:

(1) To promote the enforcement of the laws relating to nonmarital children, children in need of protection or services including developmentally disabled children and unborn children in need of protection or services and to take the initiative in all matters involving the interests of those children and unborn children when adequate provision for those interests is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies and with parents, expectant mothers and other individuals interested in the welfare of children and unborn children.

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

(2b) To accept gifts, grants, or donations of money or of property from private sources to be administered by the department for the execution of its functions. All moneys so received shall be paid into the general fund and may be appropriated from that fund as provided in s. 20.437 (1) (i).

(3) To accept guardianship of children when appointed by the court, and to provide special treatment or care when directed by the court. A court may not direct the department to administer psychotropic medications to children who receive special treatment or care under this subsection.

(3m) To accept appointment by a tribal court in this state as guardian of a child for the purpose of making an adoptive placement for the child if all of the following conditions exist:

(a) The child does not have parents or a guardian or the parental rights to the child have been terminated by a tribal court in accordance with procedures that are substantially equivalent to the procedures specified in subch. VIII.

(b) The tribal court has transferred the guardianship or legal custody, or both, of the child to the department, if the child does not have parents or a guardian.

(c) The tribal court’s judgment for termination of parental rights identifies the department as the agency that will receive guardianship or legal custody, or both, of the child upon termination, if the parental rights to the child have been terminated.

(d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

(4) In order to discharge more effectively its responsibilities under this chapter and other relevant provisions of the statutes, to study causes and methods of prevention and treatment of problems among children and families and related social problems. The department may utilize all powers provided by the statutes, including the authority to accept grants of money or property from federal, state, or private sources, and enlist the cooperation of other appropriate agencies and state departments.

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

(8m) To enter into agreements with Indian tribes in this state to implement the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

(8p) To reimburse tribes and county departments, from the appropriation under s. 20.437 (1) (kz), for unexpected or unusually high-cost out-of-home care placements of Indian children by tribal courts. In this subsection, “unusually high-cost out-of-home care placements” means the amount by which the cost to a tribe or to a county department of out-of-home care placements of Indian children by tribal courts exceeds $50,000 in a fiscal year.

(9) To license foster homes as provided in s. 48.66 (1) (a) for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county departments.

(9m) To license shelter care facilities as provided in s. 48.66 (1) (a).

(10) To license child welfare agencies and child care centers as provided in s. 48.66 (1) (a).

(11) When notified of the birth or expected birth of a child who is or is likely to be a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish the child’s paternity and that there is secured for the child, if possible, the care, support and education the child would receive if he or she were a marital child.

(12) (a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child’s adoption. Agreements under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.437 (1) (dd).

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

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

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

(16) To establish and enforce standards for services provided under ss. 48.345 and 48.346.

"2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?"
(16m) To employ under the unclassified service in an office of the department that is located in a 1st class city a director of the office of urban development who shall be appointed by the secretary to serve at the pleasure of the secretary and who shall coordinate the provision of child welfare services in a county having a population of 500,000 or more with the implementation of the Wisconsin works program under ss. 49.141 to 49.161 in a county having a population of 500,000 or more.

(17) (a) In a county having a population of 500,000 or more, to administer child welfare services and to expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare services by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall also have authority to do all of the following:

1. Investigate the conditions surrounding nonmarital children, children in need of protection or services and unborn children in need of protection or services within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to the department under the conditions specified in this subdivision. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws.

2. Accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355, and to provide special treatment or care for children and expectant mothers if ordered by the court and if providing special treatment or care is not the responsibility of the county department under s. 46.215, 51.42, or 51.437. A court may not order the department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this subdivision.

3. Provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing the children in licensed foster homes or group homes in this state or another state within a reasonable proximity to the agency with legal custody, placing the children in the homes of guardians under s. 48.977 (2), or contracting for services for those children by licensed child welfare agencies, except that the department may not purchase the educational component of private day treatment programs unless the department, the school board, as defined in s. 115.001 (7), and the state superintendent of public instruction all determine that an appropriate public education program is not available.

4. Provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents.

5. Place children in a county children’s home in the county to accept guardianship of children when appointed by the court to place children under its guardianship for adoption.

6. Provide services to the court under s. 48.06.

7. Contract with any parent or guardian or other person for the care and maintenance of any child.

8. License foster homes in accordance with s. 48.75.

9. Use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

10m. Administer kinship care and long-term kinship care as provided in s. 48.57 (3m), (3n), and (3p).

11. Contract with the county department under s. 46.215, 51.42 or 51.437 or with a licensed child welfare agency to provide any of the services that the department is authorized to provide under this chapter.

(a) The requirement of statewide uniformity with respect to the organization and governance of human services does not apply to the administration of child welfare services under par. (a).

(b) In performing the functions specified in par. (a), the department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

(bm) As soon as practicable after learning that a person who is receiving child welfare services under par. (a) from the department has changed his or her county of residence, the department shall provide notice of that change to the county department of the person’s new county of residence. The notice shall include a brief, written description of the services offered or provided to the person by the department and the name, telephone number, and address of a person to contact for more information.

(c) From the appropriations under s. 20.437 (1) (cx), (gx), (kw), and (mx), the department may provide funding for the maintenance of any child who meets all of the following criteria:

1. Is 18 years of age or older.

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.

3. Received funding under s. 20.437 (1) (cx) or 48.569 (1) (d) or under s. 20.435 (3) (cx), 2005 stats., or s. 46.495 (1) (d), 2005 stats., immediately prior to his or her 18th birthday.

4. Is living in a foster home, group home, or residential care center for children and youth.

NOTE: Subd. 4. is shown as affected by 2009 Wis. Act 28, s. 985, and 2009 Wis. Act 180 and as merged by the legislative reference bureau under s. 13.92 (2) (ii). A missing word is shown in brackets. Corrective legislation is pending.

(d) The funding provided for the maintenance of a child under par. (c) shall be in an amount equal to that which the child would receive under s. 20.437 (1) (cx), (gx), (kw), and (mx) or 48.569 (1) (d) if the child were 17 years of age.

(18) To contract with public or voluntary agencies or others for the following purposes:

(a) To purchase in full or in part care and services that the department is authorized by any statute to provide as an alternative to providing that care and those services itself.

(b) To purchase or provide in full or in part the care and services that county agencies may provide or purchase under any statute and to sell to county agencies such portions of that care and those services as the county agency may desire to purchase.

(d) To sell services, under contract, that the department is authorized to provide by statute, to any federally recognized tribal governing body.

History: 1973 c. 90, 333; 1977 c. 29, 39; 1977 c. 83, 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 813m, 834, 2102 (20) (a); 1979 c. 221, 300; 1983 a. 27, s. 2202 (20); 1983 a. 189a, 329 (17); 1983 a. 447; 1985 a. 135, 176; 1993 a. 332 ss. 251, 251 (17); 1987 a. 339; 1989 a. 31, 107, 109; 1991 a. 316; 1993 a. 16, 375, 385, 446, 499; 1995 a. 27 ss. 2526 to 2534m, 9126 (19), 9145 (1); 1995 a. 77; 1997 a. 27, 35, 80, 105, 292; 1999 s. 9, 2003 a. 38, 59, 69; 2005 a. 25, 293, 298; 2009 a. 29; 2012 a. 46, 71, 94, 180, 185 s. 13.92 (2) (i), s. 35.17 correction in (17) t. 3.

Cross-reference: See also ch. DCF 51, Wis. adm. code.
An allegation that the department failed to adopt rules or to exercise supervision over a local social service agency and that those failures led to a deprivation of child custody without due process stated a cause of action for deprivation of civil rights.


The state has ultimate foster care responsibility, and dismissal of a 42 USC 1983 action against the state for civil rights violations by a county agency was not appropriate.


48.481 Grants for children’s community programs.
From the appropriation under s. 20.437 (1) (bc), the department shall distribute the following grants for children’s community programs:

(1) FOSTER CARE PLACEMENT CONTINUATION. (a) The department shall distribute $497,200 in each fiscal year to counties for...
the purpose of supplementing payments for the care of an individ-
ual who attains age 18 after 1986 and who resided in a home
licensed under s. 48.62 for at least 2 years immediately prior to
attaining age 18 and, for at least 2 years, received payments for
exceptional circumstances in order to avoid institutionalization,
as provided under rules promulgated by the department, so that
the individual may live in a family home or other noninstitutional situ-
ation after attaining age 18. No county may use funds provided
under this paragraph to replace funds previously used by the
county for this purpose.

(b) A county shall evaluate the proposed living arrangement
of an individual under par. (a) to determine whether that living
arrangement is cost-effective compared to other care reasonably
available to the county including other community care as well as
institutional care. If the proposed living arrangement is not cost-
effective, the county may not use funds distributed under par. (a)
for the care of that individual in the proposed living arrangement.
A county shall evaluate the cost-effectiveness of the living
arrangement of an individual for whom funds are provided under
par. (a) at least once every 5 years.

(3) GRANTS TO RUNAWAY PROGRAMS. The department shall
distribute $50,000 in each fiscal year as grants to programs that
provide services for runaway children.

History: 1999 a. 9, 149; 2003 a. 33; 2007 a. 20 ss. 1117 to 1121; Stats. 2007 s.
48.481; 2009 a. 28.

48.485 Transfer of Indian children to department for adoption. If the department accepts guardianship or legal cus-
tody or both from a tribal court under s. 48.48 (3m), the depart-
ment shall seek a permanent adoptive placement for the child. If
a permanent adoptive placement is not in progress within 2 years
after entry of the termination of parental rights order by the tribal
court, the department may petition the tribal court to transfer legal
custody or guardianship of the Indian child back to the Indian
tribe, except that the department may not petition the tribal court
to transfer back to an Indian tribe legal custody or guardianship of an
Indian child who was initially taken into custody under s.
48.195 (1).

History: 1989 a. 31; 2005 a. 206; 2009 a. 94.

48.487 Tribal adolescent services. (1m) TRIBAL ADOLESCENT
SERVICES ALLOCATION. From the appropriation account
under s. 20.437 (1) (eg), the department may allocate $210,000 in
each fiscal year to provide the grants specified in subs. (2), (3) (b),
and (4m) (b).

(2) ADOLESCENT SELF-SUFFICIENCY SERVICES. From the alloca-
tion under sub. (1m), the department may provide a grant annually
in the amount of $85,000 to the elected governing body of an
Indian tribe to provide services for adolescent parents which shall
emphasize high school graduation and vocational preparation,
training, and experience and may be structured so as to strengthen
the adolescent parent’s capacity to fulfill parental responsibilities
by developing social skills and increasing parenting skills. The
Indian tribe seeking to receive a grant to provide these services
shall develop a proposed service plan that is approved by the
department.

(3) ADOLESCENT PREGNANCY PREVENTION SERVICES. (a) In this
subsection, “high-risk adolescent” means a person who is at least
13 years of age but under the age of 20 and who is at risk of becom-
ing an unmarried parent as an adolescent and of incurring long-
term economic dependency on public funds and is characterized by
one or more of the following:
1. Low self-esteem.
2. Alcohol or drug abuse.
3. Serious emotional family conflict.
4. Poverty, as a part of a family whose income is below the
poverty line, as defined under 42 USC 9902 (2).
5. Low school achievement, as a pupil who is one or more
years behind his or her pupil age group in the number of school
credits attained or in basic school skill levels.

(b) From the allocation under sub. (1m), the department may
provide a grant annually in the amount of $65,000 to the elected
governing body of an Indian tribe to provide to high-risk adoles-
cents pregnancy and parenthood prevention services which shall
be structured so as to increase development of decision-making and
communications skills, promote graduation from high school,
and expand career options and other options and which may address needs of
adolescents with respect to pregnancy prevention.

(4m) ADOLESCENT CHOICES PROJECT GRANTS. (a) In this sub-
section:
1. “Adolescent” means a person who is at least 10 years of age
but under the age of 18.
2. “Dropout” has the meaning given under s. 118.153 (1) (b).
(b) From the allocation under sub. (1m), the department may
provide a grant annually in the amount of $60,000 to the elected
governing body of an Indian tribe for the provision of information
to members of the Indian tribe in order to increase community
knowledge about problems of adolescents and information to and
activities for adolescents, particularly female adolescents, in
order to enable the adolescents to develop skills with respect to all of
the following:
1. Reducing adolescent pregnancy and high school dropout
rates,
2. Increasing economic self-sufficiency and expanding
career options for adolescents, particularly options with respect to
occupations with wages higher than the minimum wage.
3. Enhancing individual adolescent self-esteem, interpersonal
skills and responsible decision making.
4. Neutralizing sex-role stereotyping and bias.
5. Providing support services to parents and guardians.
6. Providing transitional housing and other support services.
7. Educating and training parents and guardians.
8. Identifying and referring adolescents to other programs that
provide services.
(c) Each funded tribal project under par. (b) shall provide ser-
vices in areas of the state as approved by the Indian tribe and the
department. The department shall determine the boundaries of the
regional areas prior to soliciting project grant applications.

(d) Prior to making grants to applying Indian tribes under par.
(b), the department shall consider whether and how the applying
Indian tribe proposes to coordinate its services with other public
or private resources, programs, or activities in the region and the
state.

(e) The department shall work closely with the women’s coun-
cil and the department of public instruction, on a continuing basis,
concerning the scope and direction of activities under projects
funded by the program under par. (b).

History: 1987 a. 27; 1989 a. 31; 1991 a. 39; 1995 a. 27, 289; 1999 a. 9 ss. 1123d
to 1125c, 1126d to 1128a, 1129 to 1132d; 2003 a. 16, 2005 a. 25, 2007 a. 20 ss. 1125
to 1129; Stats. 2007 s. 48.487; 2009 a. 94.

48.52 Facilities for care of children and adult expec-
tant mothers in care of department. (1) FACILITIES MAIN-
TAINED OR USED FOR CHILDREN. The department may maintain or
use the following facilities for children in its care:
1. Receiving homes to be used for the temporary care of chil-
dren.
2. Foster homes.
3. Group homes.
4. Other facilities deemed by the department to be appro-
priate for the care of children, except that no state funds may be used for the main-
tenance of a child in the care of a parent or relative eligible for aid
under s. 49.19 if such funds would reduce federal funds to this state.

(1m) FACILITIES MAINTAINED OR USED FOR ADULT EXPECTANT
MOTHERS. The department may maintain or use the following facilities for adult expectant
mothers in its care:
1. Community-based residential facilities, as defined in s.
50.01 (1g).
2. Inpatient facilities, as defined in s. 51.01 (10).
3. Other facilities determined by the department to be appro-
priate for the adult expectant mother.
48.52 CHILDREN'S CODE

(2) USE OF OTHER FACILITIES. (a) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may also contract for and pay for the use of other public facilities or private facilities for the care and treatment of children and the expectant mothers of unborn children in its care. Placements in institutions for the mentally ill or developmentally disabled shall be made in accordance with ss. 48.14 (5), 48.347 (6) and 48.63 and ch. 51.

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

(c) The department shall have the right to inspect all facilities it is using and to examine and consult with persons whom the department has placed in that facility.

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


A detention home is not an 'other facility' under sub. (1). State ex rel. Harris v. Larson, 64 Wis. 2d 2521, 219 N.W.2d 335 (1974).

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

Foster homes leased by the department pursuant to sub. (2) are immune from local zoning to the extent that the zoning conflicts with the department's possessory use of property under ch. 48, subject to s. 11.48 (13). The lessor remains responsible for property tax. 65 Atty. Gen. 93.

48.545 Brighter futures initiative. (1) DEFINITIONS. In this section:

(a) “Nonprofit corporation” means a nonprofit corporation organized under ch. 181.

(b) “Public agency” means a county, city, village, town or school district or an agency of this state or of a county, city, village, town or school district.

(2) AWARDING OF GRANTS. (a) From the appropriations under s. 20.437 (1) (eg), (kb), and (nl), the department shall distribute $2,097,700 in each fiscal year to applying nonprofit corporations and public agencies operating in counties having a population of 500,000 or more, $1,711,800 in each fiscal year to applying county departments under s. 46.22, 46.23, 51.42, or 51.437 operating in counties other than a county having a population of 500,000 or more, and $55,000 in each fiscal year to Diverse and Resilient, Inc. to provide programs to accomplish all of the following:

1. Prevent and reduce the incidence of youth violence and other delinquent behavior.
2. Prevent and reduce the incidence of youth alcohol and other drug use and abuse.
3. Prevent and reduce the incidence of child abuse and neglect.
4. Prevent and reduce the incidence of nonmarital pregnancy and increase the use of abstinence as a method of preventing nonmarital pregnancy.
5. Increase adolescent self-sufficiency by encouraging high school graduation, vocational preparedness, improved social and other interpersonal skills and responsible decision making.

(b) A nonprofit corporation or public agency that is applying for a grant under par. (a) shall provide to the department a proposed service plan for the use of the grant moneys. If the department approves the service plan, the department may award the grant. The department shall award the grants on a competitive basis and for a 3-year period.

(3) OUTCOMES EXPECTED. (a) The department shall provide a set of benchmark indicators to measure the outcomes that are expected of a program funded under sub. (2) (a). Those benchmark indicators shall measure all of the following among youth who have participated in a program funded under sub. (2) (a):

1. The rate of participation in violent or other delinquent behavior.
2. The rate of alcohol and other drug use and abuse.
3. The rate of nonmarital pregnancy and the rate at which abstinence is used to prevent nonmarital pregnancy.
4. The rate of substantiated cases of child abuse and neglect.
5. The development of self-sufficiency, as indicated by the rate of high school graduation, the degree of vocational preparedness, any improvements in social and other interpersonal skills and in responsible decision making and any other indicators that the department considers important in indicating the development of adolescent self-sufficiency.

Any other indicators that the department considers important in indicating the development of positive behaviors among adolescents.

(b) The department shall require a grant recipient under sub. (2) (a) to provide an annual report showing the status of its program participants in terms of the benchmark indicators provided under par. (a) and may renew a grant only if the recipient shows improvement on those indicators.

History: 1999 a. 9; 2001 a. 16; 2002 a. 25; 2007 a. 20 ss. 1204 to 1214; Stats. 2007 s. 48.545; 2009 a. 28; 2011 a. 32.

48.547 Alcohol and other drug abuse program.

(1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by children and the expectant mothers of unborn children is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat children and the expectant mothers of unborn children for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by children and the expectant mothers of unborn children, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of alcohol and other drugs by children and the expectant mothers of unborn children by establishing a juvenile and expectant mother alcohol and other drug abuse program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for children and expectant mothers with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 938 in the counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.437 (1) (mb) that is available for the program, the department shall select counties to participate in the program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a program, the application submitted to the department shall be a joint application by the county department that provides social services and the county department established under ss. 51.42 or 51.437. The department shall select counties in accordance with the request for proposal procedures established by the department. The department shall give a preference to county applications that include a plan for case management.

(3) MULTIDISCIPLINARY SCREEN. The department shall provide a multidisciplinary screen for the program. The screen shall be used by an intake worker to determine whether or not a child or an expectant mother of an unborn child is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen children and expectant mothers for:

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
(a) Family dysfunction.
(b) School, truancy or work problems.
(c) Mental health problems.
(d) Delinquent or criminal behavior patterns.

(4) Assessment criteria. The department shall provide uniform alcohol and other drug abuse assessment criteria to be used in the pilot program under ss. 48.245 (2) (a) 3. and 48.295 (1). An approved treatment facility that assesses a person under s. 48.245 (2) (a) 3. or 48.295 (1) may not also provide the person with treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.


48.548 Multidisciplinary screen and assessment criteria. The department shall make the multidisciplinary screen developed under s. 48.547 (3) and the assessment criteria developed under s. 48.547 (4) available to all counties.


48.55 State adoption information exchange and state adoption center. (1) The department shall establish a state adoption information exchange for the purpose of finding adoptive homes for children with special needs who do not have permanent homes and a state adoption center for the purposes of increasing public knowledge of adoption and promoting to adolescents and pregnant women the availability of adoption services. From the appropriation under s. 20.437 (1) (dg), the department may provide not more than $171,300 in each fiscal year as grants to individuals and private agencies to provide adoption information exchange services and to operate the state adoption center.

(2) The department shall promulgate rules governing the adoption information exchange and rules specifying the functions of the state adoption center. The rules specifying the functions of the state adoption center shall include all of the following:

(a) Training persons who provide counseling to adolescents including school counselors, county or department employees providing child welfare services under s. 48.56 or 48.561 and employees of a clinic providing family planning services, as defined in s. 253.07 (1) (b).

(b) Seeking persons to undergo training.

(c) Operating a toll-free telephone number to provide information and referral services.

(d) Distributing pamphlets which provide information on the availability of adoption services.

(e) Promoting adoption through the communications media.


Cross-reference: See also chs. DCF 42, 50, and 51, Wis. adm. code.

SUBCHAPTER XII

CHILD WELFARE SERVICES

48.56 Child welfare services in counties having populations of less than 500,000. (1) Each county having a population of less than 500,000 shall provide child welfare services through its county department.

(2) Each county department shall employ personnel who devote all or part of their time to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

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


48.561 Child welfare services in a county having a population of 500,000 or more. (1) The department shall provide child welfare services in a county having a population of 500,000 or more.

(2) The department shall employ personnel in a county having a population of 500,000 or more who devote all of their time directly or indirectly to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

(3) (a) A county having a population of 500,000 or more shall contribute $58,893,500 in each state fiscal year for the provision of child welfare services in that county by the department. That contribution shall be made as follows:

1. Through a reduction of $37,209,200 from the amounts distributed to that county under ss. 46.40 (2) and 48.563 (2) in each state fiscal year.

2. Through a reduction of $1,583,000 from the amount distributed to that county under s. 46.40 (2m) (a) in each state fiscal year.

3. Through a deduction of $20,101,300 from any state payment due that county under s. 79.035, 79.04, or 79.08 as provided in par. (b).

(b) The department of administration shall collect the amount specified in par. (a) 3. from a county having a population of 500,000 or more by deducting all or part of that amount from any state payment due that county under s. 79.035, 79.04, or 79.08.

The department of administration shall notify the department of revenue, by September 15 of each year, of the amount to be deducted from the state payments due under s. 79.035, 79.04 or 79.08. The department of administration shall credit all amounts collected under this paragraph to the appropriation account under s. 20.437 (1) (kw) and shall notify the county from which those amounts are collected of that collection. The department may not expend any moneys from the appropriation account under s. 20.437 (1) (cx) for providing services to children and families under s. 48.48 (17) until the amounts in the appropriation account under s. 20.437 (1) (kw) are exhausted.


48.562 Milwaukee child welfare partnership council. The Milwaukee child welfare partnership council shall do all of the following:

(1g) Hold at least one public hearing each year at which the council shall encourage public participation and solicit public input regarding the child welfare system in Milwaukee County.

(1m) Recommend policies and plans for the improvement of the child welfare system in Milwaukee County and submit its recommendations with respect to those policies and plans to the department under sub. (4m).

(2) Recommend measures for evaluating the effectiveness of the child welfare system in Milwaukee County, including outcome measures, and submit its recommendations with respect to those measures to the department under sub. (4m).

(3) Recommend funding priorities for the child welfare system in Milwaukee County and submit its recommendations with respect to those funding priorities to the department under sub. (4m).

(4) Identify innovative public and private funding opportunities for the child welfare system in Milwaukee County and submit its recommendations with respect to those funding opportunities to the department under sub. (4m).

(4m) Annually, submit a report of its recommendations under subs. (1m) to (4) to the department, which within 60 days after receiving the report shall prepare a response to those recommendations and transmit the report, together with its response, to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3).
(5) Advise the department in planning, and providing technical assistance and capacity building to support, a neighborhood-based system for the delivery of child welfare services in Milwaukee County.

History: 1995 s. 303; 1997 a. 27; 2007 a. 20 s. 799; Stats. 2007 s. 48.562; 2009 a. 337.

48.563 Children and family aids funding. (1) DISTRIBUTION LIMITS. (a) Within the limits of available federal funds and of the appropriations under s. 20.437 (1) (b), (km), and (o), the department shall distribute funds for children and family services to county departments as provided in subs. (2), (3), and (7m) and s. 48.986.

(b) Notwithstanding s. 48.568, if the department receives any federal moneys under 42 USC 670 to 679a in reimbursement of moneys allocated under par. (a) for the provision of foster care, the department shall distribute those federal moneys for services and projects to assist children and families and for the purposes specified in s. 48.567.

(c) The Milwaukee County department of social services shall report to the department in a manner specified by the department on all children under the supervision of the Milwaukee County department of social services who are placed in foster homes and whose foster parents receive funding for child care from the amounts distributed under par. (a) so that the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the amounts expended by the Milwaukee County department of social services for the provision of child care for those children. Notwithstanding s. 48.568, if the department receives any federal moneys under 42 USC 670 to 679a in reimbursement of the amounts expended by the Milwaukee County department of social services for the provision of child care for children, the department shall distribute federal moneys to the Milwaukee County department of social services for the provision of child care for children in foster care.

(d) If the department receives from the department of health services under s. 46.40 (1) (d) any federal moneys under 42 USC 1396 to 1396w in reimbursement of the cost of preventing out-of-home placements of children, the department shall use those moneys as the first source of moneys used to meet the amount of the allocation under sub. (2) that is budgeted from federal funds.

(2) BASIC COUNTY ALLOCATION. For children and family services under s. 48.569 (1) (d), the department shall distribute not more than $66,475,500 in each fiscal year.

(3) TRIBAL CHILD CARE. For child care services under 42 USC 9858, the department shall distribute not more than $412,800 in each fiscal year from the appropriation account under s. 20.437 (1) (b) to Indian tribes. An Indian tribe that receives funding under this subsection shall use that funding to provide child care for an eligible child, as defined in 42 USC 9858.

(7m) USE BY COUNTY OF CHILDREN AND FAMILY AIDS FUNDS TO PAY PRIVATE ATTORNEYS FOR CERTAIN PROCEEDINGS. Upon application by a county department under s. 46.215, 46.22, or 46.23 to the department for permission to use funds allocated to that county department under sub. (2) to employ private counsel for the purposes specified in this subsection and a determination by the department that use of funds for those purposes does not affect any federal grants or federal funding allocated under this section, the department and the county department shall execute a contract authorizing the county department to expend, as agreed upon in the contract, funds allocated to that county department under sub. (2) to permit the county department to employ private counsel to represent the interests of the state or county in proceedings under this chapter relating to child abuse or neglect, unborn child abuse, termination of parental rights, and the Indian Child Welfare Act, 25 USC 1901 to 1963.

(14m) COUNTY CHILDREN AND FAMILY AIDS BUDGETS. Before December 1 of each year, each county department and each tribal governing body shall submit to the department a proposed budget for the expenditure of funds allocated under this section, distributed under s. 48.563 (2) (a), or carried forward under s. 48.563 (3). The proposed budget shall be submitted on a form developed by the department and approved by the department of administration.

History: 2007 a. 20 ss. 1097, 1098, 1102, 1103, 1287, 9121 (6) (a); 2009 a. 28, 94; 2011 a. 32.

48.565 Carry-over of children and family aids funds. Funds allocated by the department under s. 48.569 (1) (d) but not spent or encumbered by counties, governing bodies of Indian tribes, or private nonprofit organizations by December 31 of any year and funds recovered under s. 48.569 (2) (b) and deposited into the appropriation account under s. 20.437 (1) (b) lapse to the general fund on the succeeding January 1 unless carried forward to the next calendar year under s. 20.437 (1) (b) or as follows:

(2) Subject to par. (am), if on December 31 of any year there remains unspent or unencumbered in the allocation under s. 48.563 (2) an amount that exceeds the amount received under 42 USC 670 to 679a and allocated under s. 48.569 (2) in that year, the department shall carry forward the excess moneys and distribute not less than 50% of the excess moneys to counties having a population of less than 500,000 that are making a good faith effort, as determined by the department, to comply with s. 46.22 (1) (c) 8. f. for services and projects to assist children and families, notwithstanding the percentage limit specified in sub. (3). A county shall use not less than 50% of the moneys distributed to the county under this subsection for services for children who are at risk of abuse or neglect to prevent the need for child abuse and neglect intervention services, except that in the calendar year in which a county achieves compliance with s. 46.22 (1) (c) 8. f. and in the 2 calendar years after that calendar year the county may use 100% of the moneys distributed under this paragraph to reimburse the department for the costs of achieving that compliance. If a county does not comply with s. 46.22 (1) (c) 8. f. before July 1, 2005, the department may recover any amounts distributed to that county under this paragraph after June 30, 2001, by billing the county or deducting from that county’s allocation under s. 48.563 (2). All moneys received by the department under this paragraph shall be credited to the appropriation account under s. 20.437 (1) (j).

(3) At the request of a county, tribal governing body, or private nonprofit organization, the department shall carry forward up to 3 percent of the total amount allocated to the county, tribal governing body, or nonprofit organization for a calendar year. All funds carried forward for a tribal governing body or nonprofit organization and all federal child welfare funds under 42 USC 620 to 626 carried forward for a county shall be used for the purpose for which the funds were originally allocated. Other funds carried forward under this subsection may be used for any purpose under s. 48.563 (1) (b), except that a county may not use any funds carried forward under this subsection for administrative or staff costs. An allocation of carried-forward funding under this subsection does not affect a county’s base allocation under s. 48.563 (2).

(6) The department may carry forward 10 percent of any funds specified in sub. (3) that are not carried forward under sub. (3) for emergencies, for justifiable unit services costs above planned lev-
els, and for increased costs due to population shifts. An allocation of carried-forward funding under this subsection does not affect a county’s base allocation under s. 48.563 (2).

History: 2007 a. 20 ss. 1106 to 1109, 1288; 2009 a. 94; 2011 a. 32.

48.567 Expenditure of income augmentation services receipts. (1) From the appropriation account under s. 20.437 (3) (kp), the department shall support costs that are exclusively related to the ongoing and recurring operational costs of augmenting the amount of moneys received under 42 USC 670 to 679a and to any other purpose provided for by the legislature or by law or in budget determinations. In addition, the department may expend moneys from that appropriation account as provided in subs. (1m) and (2).

(1m) In addition to expending moneys from the appropriation account under s. 20.437 (3) (kp) for the augmentation activities specified in sub. (1), the department may expend moneys from that appropriation account to support the counties’ share of implementing the statewide automated child welfare information system under s. 46.22 (1) (c) 8. f. and to provide services to children and families under s. 48.48 (17).

(2) If the department proposes to use any moneys from the appropriation account under s. 20.437 (3) (kp) for any purpose other than the purposes specified in subs. (1) and (1m), the department shall submit a plan for the proposed use of those moneys to the secretary of administration by September 1 of the fiscal year after the fiscal year in which those moneys were received. If the secretary of administration approves the plan, he or she shall submit the plan to the joint committee on finance by October 1 of the fiscal year after the fiscal year in which those moneys were received. If the cochairpersons of the committee do not notify the department within 14 working days after the date of submittal of the plan that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan. If within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan only with the approval of the committee.

History: 2007 a. 20 ss. 1112, 1289; 2011 a. 32.

48.568 Allocation of federal funds for children and family aids and child welfare. Subject to s. 48.563 (1) (b) and (c), if the department receives unanticipated federal foster care and adoption assistance payments under 42 USC 670 to 679a and it proposes to allocate the unanticipated funds so that an allocation limit in s. 48.563 is exceeded, the department shall submit a plan for the proposed allocation to the secretary of administration. If the secretary of administration approves the plan, he or she shall submit it to the joint committee on finance. If the cochairpersons of the committee do not notify the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the plan within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan, notwithstanding s. 48.563, only with the approval of the committee.

History: 2007 a. 20.

48.569 Distribution of children and family aids funds to counties. (1) (am) The department shall reimburse each county for expenditures under s. 20.437 (1) (b), (km), and (o) for children and family services as approved by the department under ss. 46.22 (1) (b) 2. f. and e. 3. b.

(d) From the appropriations under s. 20.437 (1) (b), (km), and (o), the department shall distribute the funding for children and family services, including funding for foster care or subsidized guardianship care of a child on whose behalf aid is received under s. 48.645 to county departments as provided under s. 48.563. County matching funds are required for the distribution under s. 48.563 (2). Each county’s required match for the distribution under s. 48.563 (2) shall be specified in a schedule established annually by the department. Matching funds may be from county tax levies, federal and state revenue sharing funds, or private donations to the county that meet the requirements specified in sub. (1m). Private donations may not exceed 25 percent 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.

History: 2007 a. 20; 2009 a. 28; 2011 a. 32.

48.57 Powers and duties of department and county departments providing child welfare services. (1) Each county department shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors or by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall have the authority specified in s. 48.563 (1) (b) 2. f. and (c) if the department receives unanticipated federal foster care and adoption assistance payments under 42 USC 670 to 679a and it proposes to allocate the unanticipated funds so that an allocation limit in s. 48.563 is exceeded, the department shall submit a plan for the proposed allocation to the secretary of administration. If the secretary of administration approves the plan, he or she shall submit it to the joint committee on finance. If the cochairpersons of the committee do not notify the secretary of administration that the committee has scheduled a meeting for the purpose of reviewing the plan within 14 working days after the date of the submittal by the secretary of administration the cochairpersons of the committee notify him or her that the committee has scheduled a meeting for the purpose of reviewing the plan, the department may implement the plan only with the approval of the committee.

History: 2007 a. 20 ss. 1112, 1289; 2011 a. 32.

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History: 2007 a. 20 ss. 1112, 1289; 2011 a. 32.
opmentally disabled children, and unborn children in need of protection or services within the county and to take every reason-
able action within its power to secure for them the full benefit of
all laws enacted for their benefit. Unless provided by another
agency, the county department shall offer social services to the
caretaker of any child, and to the expectant mother of any unborn
child, who is referred to it under the conditions specified in this
paragraph. This duty shall be discharged in cooperation with the
court and with the public officers or boards legally responsible for
the administration and enforcement of those laws.

(b) To accept legal custody of children transferred to it by the
court under s. 48.355, to accept supervision over expectant moth-
ers of unborn children who are placed under its supervision under s. 48.355 and to provide special treatment or care for children and
expectant mothers if ordered by the court. A court may not order
a county department to administer psychotropic medications to
children and expectant mothers who receive special treatment or
care under this paragraph.

(c) To provide appropriate protection and services for children and
the expectant mothers of unborn children in its care, including
providing services for those children and their families and for
those expectant mothers in their own homes, placing those chil-
dren in licensed foster homes or group homes in this state or
another state within a reasonable proximity to the agency with
legal custody, placing those children in the homes of guardians
under s. 48.977 (2), or contracting for services for those children
by licensed child welfare agencies, except that the county depart-
ment may not purchase the educational component of private day
treatment programs unless the county department, the school
board, as defined in s. 115.001 (7), and the state superintendent
of public instruction all determine that an appropriate public educa-
tion program is not available. Disputes between the county
department and the school district shall be resolved by the state
superintendent of public instruction.

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

(e) If a county department in a county with a population of
500,000 or more and if contracted to do so by the department, to
place children in a county children’s home in the county under pol-
cies adopted by the county board of supervisors, to accept guard-
ianship of children when appointed by the court and to place chil-
dren under its guardianship for adoption.

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

(g) Upon request of the department or the department of
corrections, to provide service for any child or expectant mother
of an unborn child in the care of those departments.

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

(i) If a county department in a county with a population of
less than 500,000, to accept guardianship, when appointed by the
court, of a child whom the county department has placed in a foster
home under a court order or voluntary agreement under s. 48.63
and to place that child under its guardianship for adoption by the
foster parent.

(j) To license foster homes in accordance with s. 48.75.

(k) To use in the media a picture or description of a child in its
guardianship for the purpose of finding adoptive parents for that
child.

(2) In performing the functions specified in sub. (1) the county
department may avail itself of the cooperation of any individual
or private agency or organization interested in the social welfare of
children and unborn children in the county.

(2m) A county department, as soon as practicable after learn-
ing that a person who is receiving child welfare services under sub.
(1) from the county department has changed his or her county of
residence, shall provide notice of that change to the county
department of the person’s new county of residence or, if that new
county of residence is a county having a population of 500,000 or
more, the department. The notice shall include a brief, written
description of the services offered or provided to the person by the
county department and the name, telephone number, and address
of a person to contact for more information.

(3) (a) From the reimbursement received under s. 46.495 (1)
d, counties may provide funding for the maintenance of any
child who:

1. Is 18 years of age or older;
2. Is enrolled in and regularly attending a secondary educa-
tion classroom program leading to a high school diploma;
3. Received funding under s. 48.569 (1) (d) or under s. 46.495
(1) (d), 2005 stats., immediately prior to his or her 18th birthday; and
4. Is living in a foster home, group home, residential care cen-
ter for children and youth, or subsidized guardianship home.

(b) The funding provided for the maintenance of a child under
par. (a) shall be in an amount equal to that which the child would
receive under s. 48.569 (1) (d) if the child were 17 years of age.

(3m) (a) In this subsection:

1. “Child” means a person under 18 years of age or a person
18 years of age or over, but under 19 years of age, who is a full-
time student in good academic standing at a secondary school or
its vocational or technical equivalent and who is reasonably
expected to complete his or her program of study and be granted a
high school or high school equivalency diploma.

2. “Kinship care relative” means a relative other than a parent.

(am) From the appropriation under s. 20.437 (2) (md), the
department shall reimburse counties having populations of less
than 500,000 for payments made under this subsection and shall
make payments under this subsection in a county having a popula-
tion of 500,000 or more. Subject to par. (ap), a county department
and, in a county having a population of 500,000 or more, the
department shall make payments in the amount of $220 per month
to a kinship care relative who is providing care and maintenance
for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department
or department for payments under this subsection and, if the child
is placed in the home of the kinship care relative under a court
order, for a license to operate a foster home.

1m. The county department or department determines that
there is a need for the child to be placed with the kinship care rela-
tive and that the placement with the kinship care relative is in the
best interests of the child.

2. The county department or department determines that the
child meets one or more of the criteria specified in s. 48.13 or
938.13, that the child would be at risk of meeting one or more of
those criteria if the child were to remain in his or her home or, if
the child is 18 years of age or over, that the child would meet or
be at risk of meeting one or more of those criteria as specified in
this subdivision if the child were under 18 years of age.

4. The county department or department conducts a back-
ground investigation under sub. (3p) of the kinship care relative,
any employee and prospective employee of the kinship care rela-
tive who has or would have regular contact with the child for
whom the payments would be made and any other adult resident
of the kinship care relative’s home to determine if the kinship care
relative, employee, prospective employee or adult resident has
any arrests or convictions that could adversely affect the child or
the kinship care relative’s ability to care for the child.

4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care rela-
tive states that he or she does not have any arrests or convictions
that could adversely affect the child or the kinship care relative’s
ability to care for the child and that no adult resident, as defined
in sub. (3p) (a), and no employee or prospective employee of the
kinship care relative who would have regular contact with the

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to
statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in
effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
child has any arrests or convictions that could adversely affect the child or the kinship care relative’s ability to care for the child.

5. The kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

6. The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

(a) 1. Subject to subs. 2. and 3., the county department or, in a county having a population of 500,000 or more, the department may make payments under par. (am) to a kinship care relative who is providing care and maintenance for a child who is placed in the home of the kinship care relative under a court order for no more than 60 days after the date on which the county department or department received under par. (am) 1. the completed application of the kinship care relative for a license to operate a foster home or, if the application is approved or denied or the kinship care relative is otherwise determined to be ineligible for licensure within those 60 days, until the date on which the application is approved or denied or the kinship care relative is otherwise determined to be ineligible for licensure.

2. If the application specified in subd. 1. is not approved or denied or the kindship care relative is otherwise determined to be ineligible for licensure within 60 days after the date on which the county department or department received the completed application for any reason other than an act or omission of the kinship care relative, the county department or department may make payments under par. (am) for 4 months after the date on which the county department or department received the completed application or, if the application is approved or denied or the kinship care relative is otherwise determined to be ineligible for licensure within those 4 months, until the date on which the application is approved or denied or the kinship care relative is otherwise determined to be ineligible for licensure.

3. Notwithstanding that an application of a kinship care relative specified in subd. 1. is denied or the kinship care relative is otherwise determined to be ineligible for licensure, the county department or, in a county having a population of 500,000 or more, the department may make payments under par. (am) to the kinship care relative for as long as the conditions specified in par. (am) 1. to 6. continue to apply if the county department or department submits to the court information relating to the background investigation specified in par. (am) 4., an assessment of the safety of the kinship care relative’s home and the ability of the kinship care relative to care for the child, and a recommendation that the child remain in the home of the kinship care relative and the court, after considering that information, assessment, and recommendation, orders the child to remain in the kinship care relative’s home. If the court does not order the child to remain in the kinship care relative’s home, the court shall order the county department or department to request a change in placement under s. 48.357 (1) (am) or 938.357 (1) (am). Any person specified in s. 48.357 (2m) (a) or 938.357 (2m) (a) may also request a change in placement.

(a) The department shall promulgate rules to provide assessment criteria for determining whether a kinship care relative who is providing care and maintenance for a child is eligible to receive payments under par. (am). The rules shall also provide that any criteria established under the rules shall first apply to applications for payments under par. (am) received, and to reviews under par. (d) conducted, on the effective date of those rules.

(b) 1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child’s parent to support or maintenance from any other person accruing during the time that payments are made under this subsection is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

CM) A kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3n) or s. 48.62 (4) or 48.623 (1) or (6) for that child.

(d) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.471.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 1m., 2., 2., 5., or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

d. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision...
is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering the kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

c. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

3. The recipient may receive payments under this subsection in a county having a population of 500,000 or more, the department may recover an overpayment made under par. (am) from a kinship care relative who continues to provide care and maintenance is not receiving supplemental security income under 42 USC 1381a to 1383c or state supplemental payments under s. 49.77.

4m. Subject to sub. (3p) (fm) 1m. and 2m., the long-term kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child and that, to the best of the long-term kinship care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the long-term kinship care relative who have or would have regular contact with the child has any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child.

5. The long-term kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The long-term kinship care relative is not receiving payments under sub. (3m) with respect to the child.

5r. The child for whom the long-term kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381a to 1383c or state supplemental payments under s. 49.77.

6. The long-term kinship care relative and the county department or department enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the county department or department agrees, subject to sub. (3p) (hm), to make monthly payments to the long-term kinship care relative at the rate specified in sub. (3m) (am) (intro.) until the earliest of the following:

a. The date on which the child attains the age of 18 years or, if on that date the child is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma, the date on which the child is granted a high school or high school equivalency diploma or the date on which the child attains the age of 19 years, whichever occurs first.

b. The date on which the child dies.

c. The date on which the child is placed outside the long-term kinship care relative's home under a court order or under a voluntary agreement under s. 48.63 (1) or (5) (b).

d. The date on which the child ceases to reside with the long-term kinship care relative.

e. The date on which the long-term kinship care's guardian

f. The date on which the child moves out of the state.

(3p) 1. Subject to subds. 2. a, and 3., the county department or, in a county having a population of 500,000 or more, the department may make payments under par. (am) to a long-term kinship care relative who is providing care and maintenance for a child who is placed in the home of the long-term kinship care relative for no more than 60 days after the date on which the county department or department received under par. (am) 1, the completed application of the long-term kinship care relative for a license to operate a foster home or, if the application is approved or denied or the long-term kinship care relative is otherwise determined to be ineligible for licensure within those 60 days, until the date on which the application is approved or denied or the long-term kinship care relative is otherwise determined to be ineligible for licensure.

2. If the application specified in subd. 1. is not approved or denied or the long-term kinship care relative is not otherwise determined to be ineligible for licensure within 60 days after the date on which the county department or department received the completed application for any reason other than an act or omission of the resident, as defined in sub. (3p) (a), of the long-term kinship care relative's home to determine if the long-term kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that are likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.
months, until the date on which the application is approved or denied or the long-term kinship care relative is otherwise determined to be ineligible for licensure.

3. Notwithstanding that an application of a long-term kinship care relative specified in subd. 1. is denied or the long-term kinship care relative is otherwise determined to be ineligible for licensure, the county department or, in a county having a population of 500,000 or more, the department may make payments under Par. (am) to the long-term kinship care relative until an event specified in Par. (am) 6. a. to f. occurs if the county department or department submits to the court information relating to the background investigation specified in par. (am) 4., an assessment of the safety of the long-term kinship care relative’s home and the ability of the long-term kinship care relative to care for the child, and a recommendation that the child remain in the home of the long-term kinship care relative and the court, after considering that information, assessment, and recommendation, orders the child to remain in the long-term kinship care relative’s home. If the court does not order the child to remain in the kinship care relative’s home, the court shall order the county department or department to request a change in placement under s. 48.977 (7). Any person specified in s. 48.357 (2m) (ar) Subject to sub. (3p) (fm) 1m. and (hm), a county department or, in a county having a population of 500,000 or more, the department shall enter into an agreement under par. (am) if all of the following conditions are met:

1. All of the conditions in par. (am) 1. to 5r. are met.
2. The applicant has expressed a willingness to enter into the agreement.
3. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am) 2. When any long-term kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child’s parent to support or maintenance from any other person accruing during the time that payments are made under this subsection is assigned to the state. If a child is the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.
4. A long-term kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3m) or s. 48.62 (4) or 48.623 (1) or (6) for that child.
5. The county department or, in a county having a population of 500,000 or more, the department shall, at least once every 12 months after the county department or department begins making payments under this subsection, determine whether any of the events specified in par. (am) 6. a. to f. have occurred. If any such events have occurred, the county department or department shall discontinue making those payments.
6. The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.471.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5., 5m. or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant and recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the long-term kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient’s behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

(h) A county department or, in a county having a population of 500,000 or more, the department may recover an overpayment made under par. (am) from a long-term kinship care relative who continues to receive payments under par. (am) by reducing the amount of the long-term kinship care relative’s monthly payment. The department may by rule specify other methods for recovering overpayments made under par. (am). A county department that recovers an overpayment under this paragraph due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

(3p) (a) In this subsection, “adult resident” means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n) with
the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n).

(b) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department, with the assistance of the department of justice, shall conduct a background investigation of the applicant.

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

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

(c) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department, with the assistance of the department of justice, shall, in addition to the investigation under par. (b) 1., conduct a background investigation of all employees and prospective employees of the applicant who have or would have regular contact with the child for whom those payments are being made and of each adult resident.

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

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

3. Before a person who is receiving payments under sub. (3m) or (3n) may employ any person in a position in which that person would have regular contact with the child for whom those payments are being made or permit any person to be an adult resident, the county department or, in a county having a population of 500,000 or more, the department, with the assistance of the department of justice, shall conduct a background investigation of the prospective employee or prospective adult resident unless that person has already been investigated under sub. 1., 2. or 2m.

(d) If the person being investigated under par. (b) or (c) is a nonresident, or at any time within the 5 years preceding the date of the application has been a nonresident, or if the county department or, in a county having a population of 500,000 or more, the department determines that the person’s employment, licensing or state court records provide a reasonable basis for further investigation, the county department or department shall require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person’s fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrest and conviction.

(e) Upon request, a person being investigated under par. (b) or (c) shall provide the county department or, in a county having a population of 500,000 or more, the department with all of the following information:

1. The person’s name.
2. The person’s social security number.
3. Other identifying information, including the person’s birthdate, gender, race and any identifying physical characteristics.
4. Information regarding the conviction record of the person under the law of this state or any other state or federal law. This information shall be provided on a notarized background verification form that the department shall provide by rule.

(f) 1. The county department or, in a county having a population of 500,000 or more, the department may provisionally approve the making of payments under sub. (3m) based on the applicant’s statement under sub. (3m) (am) 4m. The county department or department may not finally approve the making of payments under sub. (3m) unless the county department or department receives information from the department of justice indicating that the conviction record of the applicant under the law of the state is satisfactory according to the criteria specified in par. (g) 1. to 3. or payment is approved under par. (h) 4. The county department or department may make payments under sub. (3m) conditioned on the receipt of information from the federal bureau of investigation indicating that the person’s conviction record under the law of any other state or under federal law is satisfactory according to the criteria specified in par. (g) 1. to 3.

1m. The county department or, in a county having a population of 500,000 or more, the department may not enter into the agreement under sub. (3n) (am) 6. unless the county department or department receives information from the department of justice relating to the conviction record of the applicant under the law of this state and that record indicates either that the applicant has not been arrested or convicted or that the applicant has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that the director or person designated by the secretary determines is likely to adversely affect the child or the applicant’s ability to care for the child. The county department or, in a county having a population of 500,000 or more, the department may make payments under sub. (3n) conditioned on the receipt of information from the federal bureau of investigation indicating that the person’s conviction record under the law of any other state or under federal law is satisfactory because the conviction record does not include any arrest or conviction that the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this subdivision determines is likely to adversely affect the child or the applicant’s ability to care for the child.

2. A person receiving payments under sub. (3m) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department that the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payments under sub. (3m) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department receives information from the department of justice indicating that the person’s conviction record under the law of

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4-20-12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?*
law of this state is satisfactory according to the criteria specified in par. (g) 1., to 3. and the county department or, in a county having a population of 500,000 or more, the department so advises the person receiving payments under sub. (3m) or until a decision is made under par. (h) 4., to permit a person who is receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or to permit a person to be an adult resident and the county department or, in a county having a population of 500,000 or more, the department so advises the person receiving payments under sub. (3m). A person receiving payments under sub. (3m) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department that the federal bureau of investigation indicates that the person’s conviction record under the law of any other state or under federal law is satisfactory because the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department that, to the best of his or her knowledge, the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department that the federal bureau of investigation indicates that the person’s conviction record under the law of any other state or federal law is satisfactory according to the criteria specified in par. (g) 1., to 3.

2m. A person receiving payments under sub. (3n) may provisionally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or provisionally permit a person to be an adult resident if the person receiving those payments states to the county department or, in a county having a population of 500,000 or more, the department that, to the best of his or her knowledge, the employee or adult resident does not have any arrests or convictions that could adversely affect the child or the ability of the person receiving payments to care for the child. A person receiving payment under sub. (3n) may not finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident until the county department or, in a county having a population of 500,000 or more, the department that the federal bureau of investigation indicates that the person’s conviction record under the law of this state and that record indicates either that the person has not been arrested or convicted or that the person has been arrested or convicted but the director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the ability of the person receiving payments to care for the child and the county department or department so advises the person receiving payments under sub. (3n). A person receiving payments under sub. (3n) may finally employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident conditioned on the receipt of information from the county department or, in a county having a population of 500,000 or more, the department that the federal bureau of investigation indicates that the person’s conviction record under the law of any other state or federal law is satisfactory because the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the ability of the person receiving payments to care for the child.

(g) Except as provided in par. (h), the county department or, in a county having a population of 500,000 or more, the department may not make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may not employ a person in a position in which that person would have regular contact with the child for whom those payments are being made or permit a person to be an adult resident if any of the following applies:

1. The person has been convicted of a violation of ch. 961 that is punishable as a felony or of a violation of the law of any other state or federal law that would be a violation of ch. 961 that is punishable as a felony if committed in this state.
2. The person has had imposed on him or her a penalty specified in s. 939.64, 1999 stats., or s. 939.641, 1999 stats., or s. 939.62, 939.621, 939.63 or 939.645 or has been convicted of a violation of the law of any other state or federal law under circumstances under which the person would be subject to a penalty specified in any of those sections if convicted in this state.
3. The person has been convicted of a violation of ch. 940, 944, or 948, other than a violation of s. 940.291, 940.34, 944.36, 944.45, 948.63, or 948.70, or of a violation of the law of any other state or federal law that would be a violation of ch. 940, 944, or 948, other than a violation of s. 940.291, 940.34, 944.36, 944.45, 948.63, or 948.70, if committed in this state, except that a county department or, in a county having a population of 500,000 or more, the department may make payments to a person applying for payments under sub. (3m) and a person receiving payments under sub. (3m) may employ in a position in which the person would have regular contact with the child for whom those payments are being made or permit to be an adult resident a person who has been convicted of a violation of s. 944.30, 944.31, or 944.33 or of a violation of the law of any other state or federal law that would be a violation of s. 944.30, 944.31, or 944.33 if committed in this state, if that violation occurred 20 years or more before the date of the investigation.

(h) 1. A person who is denied payments under sub. (3m) for a reason specified in par. (g) 1., 2. or 3. or a person who is prohibited from employing a person in a position in which that person would have regular contact with the child for whom those payments are being made or finally permit a person to be an adult resident for a reason specified in par. (g) 1., 2. or 3. may request that the denial of payments or the prohibition on employment or being an adult resident be reviewed.
2. The request for review shall be filed with the director of the county department or, in a county having a population of 500,000 or more, with the person designated by the secretary to review conviction records under this subdivision that the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the ability of the person receiving payments to care for the child and the county department or department so advises the person receiving payments under sub. (3n). The director of the county department or, in a county having a population of 500,000 or more, the person designated by the secretary to review conviction records under this subdivision determines that the conviction record is satisfactory because it does not include any arrest or conviction that is likely to adversely affect the child or the ability of the person receiving payments to care for the child.
3. The director of the county department, the person designated by the governing body of an Indian tribe or, in a county having a population of 500,000 or more, the person designated by the secretary to receive requests for review filed under this subdivision. If the governing body of an Indian tribe has entered into an agreement under sub. (3t) to administer the program under this subsection and sub. (3m), the request for review shall be filed with the person designated by that governing body to receive requests for review filed under this subdivision.
4. The director of the county department, the person designated by the governing body of an Indian tribe or, in a county having a population of 500,000 or more, the person designated by the secretary shall review the denial of payments or the prohibition on employment or being an adult resident to determine if the conviction record on which the denial or prohibition is based includes any arrests, convictions, or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child. In reviewing the denial or prohibition, the director of the county department, the person designated by the governing body of the Indian tribe or the person designated by the secretary shall consider all of the following factors:
   a. The length of time between the date of the arrest, conviction or of the imposition of the penalty and the date of the review.
   b. The nature of the violation or penalty and how that violation or penalty affects the ability of the kinship care relative to care for the child.
   c. Whether making an exception to the denial or prohibition would be in the best interests of the child.
4. If the director of the county department, the person designated by the governing body of the Indian tribe or, in a county having a population of 500,000 or more, the person designated by the secretary determines that the conviction record on which the denial of payments or the prohibition on employment or being an
adult resident is based does not include any arrests, convictions, or penalties that are likely to adversely affect the child or the ability of the kinship care relative to care for the child, the director of the county department, the person designated by the governing body of the Indian tribe, or the person designated by the secretary may approve the making of payments under sub. (3m) or may permit a person receiving payments under sub. (3m) to employ a person in a position in which that person would have regular contact with the child for whom payments are being made or permit a person to be an adult resident.

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

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

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

(j) A county department or, in a county having a population of 500,000 or more, the department may charge a fee for conducting a background investigation under this subsection. The fee may not exceed the reasonable cost of conducting the investigation.

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


This section does not authorize the department to place children in a detention home temporarily while permanent placement is sought. State ex rel. Harris v. Larson, 64 Wis. 2d 521, 219 N.W.2d 335 (1974).

County agencies providing child welfare services do not have authority under sub. (1) or s. 48.32 to lease real property for foster home use. 65 Atty. Gen. 93.

48.576 Shelter care facilities; general supervision and inspection by department. (1) Generally. The department shall investigate and supervise all shelter care facilities and familiarize itself with all the circumstances affecting their management and usefulness.

(2) Inspections. The department shall inquire into the methods of treatment, instruction, government, and management of children placed in shelter care facilities; the conduct of the trustees, managers, directors, superintendents, and other officers and employees of those facilities; the condition of the buildings, grounds, and all other property pertaining to those facilities; and all other matters pertaining to the usefulness and management of those facilities; and recommend to the officers in charge such changes and additional provisions as the department considers proper.

(3) Frequency of Inspections. The department shall inspect and investigate each shelter care facility at least annually and, when directed by the governor, the department shall conduct a special investigation into a shelter care facility’s management, or anything connected with its management, and report to the governor the testimony taken, the facts found, and conclusions drawn.

(4) Enforcement by Attorney General and District Attorneys. Upon request of the department, the attorney general or the district attorney of the proper county shall aid in any investigation, inspection, hearing, or trial had under the provisions of this chapter relating to powers of the department, and shall institute and prosecute all necessary actions or proceedings for the enforcement of those provisions and for the punishment of violations of those provisions. The attorney general or district attorney so requested shall report or confer with the department regarding the request, within 30 days after the receipt of the request.

(5) Opportunity to Inspect. All trustees, managers, directors, superintendents, and other officers or employees of a shelter care facility shall at all times afford to every member of the department and its agents unrestricted facility for inspection of and free access to all parts of the buildings and grounds and to all books and papers of the shelter care facility, and shall give, either verbally or in writing, such information as the department requires. Any person who violates this subsection shall forfeit not less than $10 nor more than $100.

(6) Testimonial Power; Expenses. The department or any person delegated by the department may administer oaths, take testimony, and cause depositions to be taken. All expenses of the investigations, including fees of officers and witnesses, shall be charged to the appropriation for the department.

(7) Statistics to be Furnished. Whenever the department is required to collect statistics, the person or agency shall furnish the required statistics on request.

History: 2007 a. 20.

48.578 Shelter care facilities; establishment, approval, inspection. (1) The department shall fix reasonable standards and regulations for the design, construction, repair, and maintenance of shelter care facilities, with respect to their adequacy and fitness for the needs that they are to serve.

(2) The selection and purchase of the site, and the plans, specifications, and erection of buildings for shelter care facilities shall be subject to the review and approval of the department. Department review shall include review of the proposed program to be carried out by the shelter care facility.

(3) Before any shelter care facility is occupied, and at least annually thereafter, the department shall inspect the shelter care facility, with respect to safety, sanitation, adequacy, and fitness, and report to the authorities managing the shelter care facility any deficiency found, and order the necessary work to correct that deficiency. If within 6 months after the inspection the work is not commenced, or not completed within a reasonable period after commencement of the work, to the satisfaction of the department, the department shall suspend the allowance of state aid for, and prohibit the use of the shelter care facility, until the order is complied with.

History: 2007 a. 20.

48.58 County children’s home in populous counties. (1) Any existing county children’s home in counties with a population of 500,000 or more may do any of the following:

(b) Provide care for children in need of protection or services, and delinquent juveniles referred by the county department under s. 46.215, if the delinquent juveniles are placed in separate facilities;
(c) Provide temporary shelter care for children in need of protection or services and delinquent juveniles; provided that the delinquent juveniles are placed in separate facilities.

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


48.59 Examination and records. (1) The county department or, in a county having a population of 500,000 or more, the department or an agency under contract with the department shall investigate the personal and family history and environment of any child transferred to its legal custody or placed under its supervision under s. 48.345 and of every expectant mother of an unborn child placed under its supervision under s. 48.347 and make any physical or mental examinations of the child or expectant mother considered necessary to determine the type of care necessary for the child or expectant mother. The county department, department or agency shall screen a child or expectant mother who is examined under this subsection to determine whether the child or expectant mother is in need of special treatment or care because of alcohol or other drug abuse, mental illness or severe emotional disturbance. The county department, department or agency shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the child or expectant mother, the results of all tests and examinations given the child or expectant mother and a complete history of all placements of the child while in the legal custody or under the supervision of the county department, department or agency or of the expectant mother while under the supervision of the county department, department or agency.

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


A county with a population under 500,000 may, by ordinance under s. 19.21 (6), [now s. 19.21 (5)] provide for the destruction of obsolete case records maintained by county social services agencies. 70 Atty. Gen. 196.

SUBCHAPTER XIII

CHILD WELFARE AGENCIES

48.599 Definitions. In this subchapter:

(1) “Physical restraint” includes all of the following:

(a) A locked room.

(b) A device or garment that interferes with a child’s freedom of movement and that the child is unable to remove easily.

(c) Restraint by a child welfare agency staff member of a child by use of physical force.

(2) “Psychotropic medication” means an antipsychotic, antidepressant, lithium carbonate or a tranquilizer.

History: 1989 a. 336.

48.60 Child welfare agencies licensed. (1) No person may receive children, with or without transfer of legal custody, to provide care and maintenance for 75 days in any consecutive 12 months’ period for 4 or more such children at any one time unless that person obtains a license to operate a child welfare agency from the department. To obtain a license under this subsection to operate a child welfare agency, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685 and pay the applicable license fee under s. 48.615 (1) (a) or (b). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(2) This section does not include:

(a) A relative, guardian, or person delegated care and custody of a child under s. 48.979 who provides care and maintenance for such children.

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

(c) A public agency.

(d) A hospital or nursing home licensed, approved or supervised by the department.

(e) A licensed foster home.

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

(g) A licensed group home.

(3) Before issuing or continuing any license to a child welfare agency under this section, the department shall review the need for the additional placement resources that would be made available by licensing or continuing the license of any child welfare agency. After August 5, 1973, providing care authorized under s. 48.61 (3). Neither the department nor the department of corrections may make any placements to any child welfare agency where the departmental review required under this subsection has failed to indicate the need for the additional placement resources.

(4) (a) In this subsection, “child with a disability” has the meaning given in s. 115.76 (5).

(b) Notwithstanding ss. 121.78 (3) (a) and 121.79 (1) (a), a child welfare agency shall pay for the costs incurred by a school district in providing special education and related services to a child with a disability which has been placed with the child welfare agency under the Interstate Compact on the Placement of Children under s. 48.998 or the Interstate Compact for the Placement of Children under s. 48.99.

(5) (a) No later than 24 hours after the death of a child who resided in a residential care center for children and youth operated by a child welfare agency, the child welfare agency shall report the death to the department if one of the following applies:

1. There is reasonable cause to believe that the death was related to the use of physical restraint or a psychotropic medication for the child.

2. There is reasonable cause to believe that the death was a suicide.

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


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

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

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

(3) To provide appropriate care and training for children in its legal or physical custody and, if licensed to do so, to place children in licensed foster homes and licensed group homes and in the homes of guardians under s. 48.977 (2).

(4) To provide for the moral and religious training of children in its legal custody according to the religious belief of the child or the child’s parents.
48.61 CHILDMEN'S CODE

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

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

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


Cross-reference: See also ch. DCF 54, Wis. adm. code.

48.615 Child welfare agency licensing fees. (1) (a) Except as provided in par. (e), before the department may issue a license under s. 48.60 (1) to a child welfare agency that regularly provides care and maintenance for children within the confines of a residential care center for children and youth operated by the child welfare agency, the child welfare agency must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 per child, based on the number of children that the child welfare agency is licensed to serve.

NOTE: Par. (a) is shown as amended eff. 7−1−12 by 2011 Wis. Act 209. Prior to 7−1−12 it reads:

(a) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that regularly provides care and maintenance for children within the confines of a residential care center for children and youth operated by the child welfare agency, the child welfare agency must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 per child, based on the number of children that the child welfare agency is licensed to serve.

(b) Except as provided in par. (e), before the department may issue a license under s. 48.60 (1) to a child welfare agency that places children in licensed foster homes, licensed group homes, and in the homes of guardians under s. 48.977 (2), the child welfare agency must pay to the department a biennial fee of $254.10.

NOTE: Par. (b) is shown as amended eff. 7−1−12 by 2011 Wis. Act 209. Prior to 7−1−12 it reads:

(b) Before the department may issue a license under s. 48.60 (1) to a child welfare agency that places children in licensed foster homes, licensed group homes, and in the homes of guardians under s. 48.977 (2), the child welfare agency must pay to the department a biennial fee of $254.10.

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

(d) A new child welfare agency shall pay the applicable fee under par. (a) or (b) no later than 30 days before the opening of the child welfare agency.

(e) An individual who is eligible for a fee waiver under the veterans fee waiver program under s. 45.44 is not required to pay the fee under par. (a) or (b) for a license under s. 48.60 (1).

NOTE: Par. (e) is created eff. 7−1−12 by 2011 Wis. Act 209.

(2) A child welfare agency that wishes to continue a license issued under s. 48.60 (1) that fails to pay the applicable fee under sub. (1) (a) or (b) by the continuation date of the license or a new child welfare agency that fails to pay the applicable fee under sub. (1) (a) or (b) by 30 days before the opening of the child welfare agency shall pay an additional fee of $5 per day for every day after the deadline that the agency fails to pay the fee.


SUBCHAPTER XIV

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

History: 2001 a. 69; 2009 a. 28.
**The department shall promulgate rules relating to foster homes as follows:**

(a) Rules providing levels of care that a foster home is licensed to provide. Those levels of care shall be based on the level of knowledge, skill, training, experience, and other qualifications that are required of the licensee, the level of responsibilities that are expected of the licensee, the needs of the children who are placed with the licensee, and any other requirements relating to the ability of the licensee to provide for those needs that the department may promulgate by rule.

(b) Rules establishing a standardized assessment tool to assess the needs of a child placed or to be placed outside the home, to determine the level of care that is required to meet those needs, and to place the child in a placement that meets those needs. A foster home that is certified to provide a given level of care under par. (a) may provide foster care for any child whose needs are assessed to be at or below the level of care that the foster home is certified to provide. A foster home that is certified to provide a given level of care under par. (a) may not provide foster care for any child whose needs are assessed to be above that level of care unless the department, county department, or department determines that the foster home license determines that support or services sufficient to meet the child’s needs are in place and grants an exception to that prohibition.

(c) Rules providing monthly rates of reimbursement for foster care that are commensurate with the level of care that the foster home license is licensed to provide and the needs of the child who is placed in the foster home. Those rates shall include rates for supplemental payments for special needs, exceptional circumstances, and initial clothing allowances for children placed in a foster home that is receiving an age-related monthly rate under sub. (4).

In promulgating the rules under this paragraph, the department shall provide a mechanism for equalizing the amount of reimbursement received by a foster parent prior to the promulgation of those rules and the amount of reimbursement received by a foster parent under those rules so as to reduce the amount of any reimbursement that may be lost as a result of the implementation of those rules.

(d) Rules providing a monthly retainer fee for a foster home that agrees to maintain openings for emergency placements.

(9) As soon as the department is ready to implement the rules promulgated under sub. (8), the secretary shall send a notice to the legislative reference bureau for publication in the Wisconsin Administrative Register that states the date on which the provisions of 2009 Wisconsin Act 28, relating to foster care levels of care will become effective.


**Cross-reference:** See also ch. DCF 56, Wis. adm. code.

A foster child in a family owned foster home under a one-year dispositional order is a resident of the household for insurance purposes. A G v. Travelers Insurance Co. 112 Wis. 2d 18, 331 N.W. 2d 643 (Cl. App. 1983).

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

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

48.623 **Subsidized guardianships.** (1) **Eligibility.** A county department or, in a county having a population of 750,000 or more, the department shall provide monthly subsidized guardianship payments in the amount specified in sub. (3) (b) to a guardian and all adults residing in the guardian’s home who meet the conditions specified in par. (a), if the county department or department and the guardian agree on the appropriateness of placing the sibling in the home of the guardian. A guardian of a child under s. 48.977 (2) or under a substantially similar tribal law is eligible for monthly subsidized guardianship payments under this subsection if the county department or, in a county having a population of 750,000 or more, the department determines that all of the following apply:

(a) The child meets all of the following conditions:

1. The child has been removed from his or her home under a voluntary agreement under s. 48.43 or under a substantially similar tribal law or under a court order containing a finding that continued placement of the child in his or her home would be contrary to the welfare of the child.

2. The child has been residing in the home of the guardian for not less than 6 consecutive months.

3. The child’s situation precludes return of the child to his or her home or adoption as appropriate permanency options for the child.

4. The child demonstrates a strong attachment to the guardian.

5. If the child is 14 years of age or over, the child has been consulted with regarding the guardianship arrangement.

(b) The guardian meets all of the following conditions:

1. The guardian is a relative of the child or is a person who has a significant emotional relationship with the child and who, prior to the child’s placement in out-of-home care, had an existing relationship with the child that is similar to a familial relationship.

2. The guardian has a strong commitment to caring permanently for the child.

3. The guardian is licensed as the child’s foster parent and the guardian and all adults residing in the guardian’s home meet the requirements specified in s. 48.685.

5. Prior to being named as the guardian of the child, the guardian entered into a subsidized guardianship agreement under sub. (2) with the county department or department.

(c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the child, outside of the child’s home has been terminated, or any proceeding in which the child has been adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r).

(d) If the county department or department knows or has reason to know that the child is an Indian child, the Indian child’s parent, Indian custodian, and tribe have been provided with notice of the child’s placement in the home of the guardian under s. 48.977 (4) (c) 2m. and the court has found under s. 48.977 (4) (g) 4 that the home of the guardian is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court found good cause, as described in s. 48.028 (7) (e), for departing from that order.

(2) **SUBSIDIZED GUARDIANSHIP AGREEMENT.** Before a county department or the department may approve the provision of subsidized guardianship payments under sub. (1) to a proposed guardian, the county department or department shall negotiate and enter into a written, binding subsidized guardianship agreement with the proposed guardian and provide the proposed guardian with a copy of the agreement. A subsidized guardianship agreement shall specify all of the following:

(a) The amount of the monthly subsidized guardianship payments that will be provided under the agreement and the manner in which those payments may be adjusted periodically, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child.

(b) Any additional services and assistance for which the child or guardian will be eligible under the agreement, a description of those additional services and that additional assistance, and the
procedures by which the guardian may apply for those additional services and that additional assistance.

(c) That the county department or department will pay the total cost of the nonrecurring expenses that are associated with obtaining guardianship of the child, not to exceed $2,000.

(d) That the agreement shall remain in effect without regard to the state of residence of the guardian.

(e) That, in determining eligibility for adoption assistance under s.48.975 and 42 USC 673 for the care of the child, the placement of the child in the home of the guardian and any payments made under sub. (1) shall be considered never to have been made.

3 PAYMENTS. (a) In a county having a population of 750,000 or more, the department shall provide the monthly payments under sub. (1) or (6) from the appropriations under s. 20.437 (1) (dd) and (pd). In any other county, the county department shall provide those payments from moneys received under s. 48.569 (1) (d).

(b) The amount of a monthly payment under sub. (1) or (6) for the care of a child shall equal the amount received under s. 48.62 (4) by the guardian of the child for the month immediately preceding the month in which the guardianship order was granted or a lesser amount if agreed to by the guardian and specified in the agreement under sub. (2). The county department or department shall determine whether there has been a substantial change in circumstances and if there has been a substantial change in circumstances and if there has been a substantial report of abuse or neglect of the child by the person receiving those payments. If there has been a substantial report of abuse or neglect of the child by that person, the county department or department shall offer to increase the amount of those payments based on criteria established by the department by rule promulgated under sub. (7) (b). If an increased monthly subsidized guardianship payment is agreed to by the person receiving those payments, the county department or department shall amend the agreement in writing to specify the increased amount of those payments.

2. Annually, a county department or department shall review an agreement that has been amended under sub. 1. to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist. If that substantial change in circumstances no longer exists, the county department or department shall offer to decrease the amount of the monthly subsidized guardianship payments provided under sub. (1) based on criteria established by the department under sub. (7) (c). If the decreased amount of those payments is agreed to by the person receiving those payments, the county department or department shall amend the agreement in writing to specify the decreased amount of those payments. If the decreased amount of those payments is not agreed to by the person receiving those payments, that person may appeal the decision of the county department or department regarding the decrease under sub. (5).

3. A county department or department may propose to a person receiving monthly subsidized guardianship payments that the agreement under sub. (2) (b) be amended to adjust the amount of those payments. If an adjustment in the amount of those payments is agreed to by the person receiving those payments, the agreement shall be amended in writing to specify the adjusted amount of those payments.

4. An agreement under sub. (2) may be amended more than once under subd. 1. or 3.

(d) The department or a county department may recover an overpayment made under sub. (1) or (6) from a guardian or interim caretaker who continues to receive those payments by reducing the amount of the person’s monthly payment. The department may by rule specify other methods for recovering those overpayments. A county department that recovers an overpayment under this paragraph due to the efforts of its officers and employees may retain a portion of the amount recovered, as provided by the department by rule.

4 ANNUAL REVIEW. A county department or the department shall review a placement of a child for which the county department or department makes payments under sub. (1) not less than every 12 months after the county department or department begins making those payments to determine whether the child and the guardian remain eligible for those payments. If the child or the guardian is no longer eligible for those payments, the county department or department shall discontinue making those payments.

5 APPEAL. (a) Any person whose application for payments under sub. (1) is not acted on promptly or is denied or is offered on the grounds that a condition specified in sub. (1) has not been met and any person whose payments under sub. (1) are decreased under sub. (3) or discontinued under sub. (4) may petition the department for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition.

(b) 1. Upon receipt of a timely petition described in par. (a) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The department shall make a decision after the hearing.

2. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

3. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under sub. (1) are being decreased or discontinued, those payments may not be decreased or discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department or the subunit of the department whose action is the subject of the hearing that the recipient has requested a hearing. Payments under sub. (1) shall be decreased or discontinued if the recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient’s behalf.

3. The recipient shall be promptly informed in writing if his or her payments under sub. (1) are to be decreased or discontinued pending the hearing decision.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
(6) INTERIM CARETAKER. On the death, incapacity, resignation, or removal of a guardian receiving payments under sub. (1), the county department or the department providing those payments shall provide monthly subsidized guardianship payments in the amount specified in sub. (3) (b) for a period of up to 12 months to an interim caretaker if all of the following conditions are met:

(a) The county department or department inspects the home of the interim caretaker, interviews the interim caretaker, and determines that placement of the child with the interim caretaker is in the best interests of the child. In the case of an Indian child, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2).

(b) The county department or department conducts a background investigation under s. 48.685 of the interim caretaker and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home in which a person receiving monthly subsidized guardianship payments or permission to reside in the home of an interim caretaker for a reason specified in s. 48.685 (1m) (a) 1. to 5. or (b) 1. to 5.

(c) The interim caretaker cooperates with the county department or department in finding a permanent placement for the child.

(d) If the county department or department knows or has reason to know that the child is an Indian child, the county department or department provides notice of the Indian child’s placement in the home of the interim caretaker to the Indian child’s parent, Indian custodian, and tribe and determines that the home in which the interim caretaker complies with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(7) RULES. The department shall promulgate rules to implement this section. Those rules shall include all of the following:

(a) A rule defining the substantial change in circumstances under sub. (1) that placement of the child no longer exists.

(b) Rules establishing requirements for submitting a request under sub. (3) (c) 1. and criteria for determining the amount of the increase in monthly subsidized guardianship payments that a county department or the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the person receiving those payments.

(c) Rules establishing the criteria for determining the amount of the decrease in monthly subsidized guardianship payments that the department shall offer under sub. (3) (c) 2. if a substantial change in circumstances no longer exists. The criteria shall provide that the amount of the decrease offered by the department under sub. (3) (c) 2. may not result in a monthly subsidized guardianship payment that is less than the initial monthly subsidized guardianship payment provided for the child under sub. (1).

History: 2011 a. 32 ss. 133za, 133za to 133za, 133wv, Stats. 2011 s. 48.623.

48.625 Licensing of group homes; fees. (1) Any person who receives, with or without transfer of legal custody, 5 to 8 children, not including children who under sub. (1m) are not counted toward that number, to provide care and maintenance for those children shall obtain a license to operate a group home from the department. To obtain a license under this subsection to operate a group home, a person must meet the determination of need requirement under sub. (1g), meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under sub. (2). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(1g) No person may apply for a license under sub. (1) to operate a new group home or for an amendment to a license under sub. (1) that would increase the bed capacity of an existing group home until the department has reviewed the need for the additional placement resources that would be made available by the issuance or amendment of the license and has certified in writing that a need exists for the proposed additional placement resources. The department shall promulgate rules to implement this subsection.

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

(2) (a) Except as provided in par. (c), before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

NOTE: Par. (a) is shown as amended eff. 7−1−12 by 2011 Wis. Act 209. Prior to 7−1−12 it read: (a) Before the department may issue a license under sub. (1) to a group home, the group home must pay to the department a biennial fee of $121, plus a biennial fee of $18.15 per child, based on the number of children that the group home is licensed to serve. A group home that wishes to continue a license issued under sub. (1) shall pay the fee under this paragraph by the continuation date of the license. A new group home shall pay the fee under this paragraph no later than 30 days before the opening of the group home.

(b) A group home that wishes to continue a license issued under sub. (1) and that fails to pay the fee under par. (a) by the continuation date of the license or a new group home that fails to pay the fee under par. (a) by 30 days before the opening of the group home shall pay an additional fee of $5 per day for every day after the deadline that the group home fails to pay the fee.

(c) An individual who is eligible for a fee waiver under the veterans fee waiver program under s. 45.44 is not required to pay the fee under par. (a) for a license under sub. (1).

NOTE: Par. (c) is created eff. 7−1−12 by 2011 Wis. Act 209.

(2m) When the department issues a license to operate a group home, the department shall notify the clerk of the school district in which the group home is located that a group home has been licensed in the school district.

(3) This section does not apply to a foster home licensed under s. 48.64 (1) or to a relative or guardian of a child or a person delegated care and custody of a child under s. 48.979 who provides care and maintenance for the child.


"2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?"
48.627 Foster and family-operated group home parent insurance and liability. (1) In this section, “family-operated group home” means a home licensed under s. 48.625 for which the licensee is one or more individuals who operate not more than one group home.

(2) (a) Before the department, a county department, or a licensed child welfare agency may issue, renew, or continue a foster home or family-operated group home license, the licensing agency shall require the applicant to furnish proof satisfactory to the licensing agency that he or she has homeowner’s or renter’s liability insurance that provides coverage for negligent acts or omissions by children placed in a foster home or family-operated group home that result in bodily injury or property damage to 3rd parties.

(b) A licensing agency may, in accordance with rules promulgated by the department, waive the requirement under par. (a) if the applicant shows that he or she is unable to obtain the required insurance, that he or she has had a homeowner’s or renter’s liability insurance policy canceled or that payment of the premium for the required insurance would cause undue financial hardship.

(c) The department shall conduct a study to determine the cost-effectiveness of purchasing insurance to provide standard coverage for the liabilities of home operators or families in a foster home or a family-operated group home. The department shall also prorate the available funds among the claimants with approved claims.

(d) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year, the department shall prorate the available funds among the claimants with approved claims. The department shall prorate the available funds among the claimants with approved claims.

(e) If the department determines that it would be cost-effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.437 (1) (cf) and (pd). The department may enter into a contract for the administration of this subsection.

(2c) The department shall determine the cost-effectiveness of purchasing private insurance that would provide coverage to foster and family-operated group home parents for acts or omissions by or affecting a child who is placed in a foster home or a family-operated group home, if the private insurance is cost-effective and available. The department shall purchase the insurance from the appropriations under s. 20.437 (1) (cf) and (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home or a family-operated group home shall be in accordance with subs. (2m) to (3).

(2m) Within the limits of the appropriations under s. 20.437 (1) (cf) and (pd), the department shall pay claims to the extent not covered by any other insurance and subject to the limitations specified in sub. (3), for bodily injury or property damage sustained by a licensed foster or family-operated group home parent or a member of the foster or family-operated group home parent’s family as a result of the act of a child in the foster or family-operated group home parent’s family and the act of a child in the foster or family-operated group home parent’s family.

(2s) If the department determines that it would be cost-effective to purchase such insurance, it may purchase the insurance from the appropriations under s. 20.437 (1) (cf) and (pd). If the insurance is unavailable, payment of claims for acts or omissions by or affecting a child who is placed in a foster home or a family-operated group home shall be in accordance with subs. (2m) to (3).

(a) Acts or omissions of the foster or family-operated group home parent that result in bodily injury to the child who is placed in the foster home or family-operated group home or that form the basis for a civil action for damages by the foster child’s parent against the foster or family-operated group home parent.

(b) Bodily injury or property damage caused by an act or omission of a child who is placed in the foster or family-operated group home parent’s care for which the foster or family-operated group home parent becomes legally liable.

(3) (b) A claim under sub. (2m) shall be submitted to the department within 90 days after the bodily injury or property damage occurred. A claim under sub. (2s) shall be submitted within 90 days after a foster or family-operated group home parent learns that a legal action has been commenced against that parent. No claim may be paid under this subsection unless it is submitted within the time limits specified in this paragraph.

(c) The department shall review and approve in whole or in part or disapprove all claims received under this subsection during each 3-month period beginning with the period from July 1, 1985, to September 30, 1985.

(d) No claim may be approved in an amount exceeding the total amount available for paying claims under this subsection in the fiscal year during which the claim is submitted. No claim for property damage sustained by a foster or family-operated group home parent or a member of a foster or family-operated group home parent’s family may be approved in an amount exceeding $250,000.

(e) The department may not approve a claim unless the foster or family-operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the amount determined is in excess of the amount covered by this insurance.

(f) If the total amount of the claims approved during any calendar quarter exceeds 25% of the total funds available during the fiscal year, the department shall prorate the available funds among the claimants with approved claims. The department shall prorate the available funds within the limits of the appropriations under s. 20.437 (1) (cf) and (pd). The department may not approve a claim unless the foster or family-operated group home parent submits with the claim evidence that is satisfactory to the department of the cause and value of the amount determined is in excess of the amount covered by this insurance.

(h) If a claim by a foster or family-operated group home parent or a member of the foster or family-operated group home parent’s family is approved, the department shall pay claims from the amount approved $100 less any amount deducted by an insurance company for a payment for the same claim, except that a foster or family-operated group home parent and his or her family are subject to only one deductible for all claims filed in a fiscal year.

(i) The department may enter into a contract for the administration of this subsection.

(4) Except as provided in s. 895.485, the department is not liable for any act or omission by or affecting a child who is placed in a foster home or family-operated group home, and shall, as provided in this section, pay claims described under sub. (2s) to (5). The attorney general may represent a foster or family-operated group home parent in any civil action arising out of an act or omission of the foster or family-operated group home parent while acting in his or her capacity as a foster or family-operated group home parent.


Foster parents are not agents of the county for purposes of tort liability. Kara B. v. Dane County, 198 Wis. 2d 24, 542 N.W.2d 777 (Ct. App. 1995), 94–1081.

48.63 Restrictions on placements. (1) Acting under court order or voluntary agreement, the child’s parent, guardian, or Indian custodian, or the department, the department of corrections, a county department, or a child welfare agency licensed to place children in foster homes or group homes may place a child in foster or family-operated group home placement under a voluntary agreement.


Foster homes, group homes and family-operated group home placement under a voluntary agreement may not exceed 180 days. Each voluntary agreement shall be in writing and shall specify the limits of the appropriated funds remaining in the appropriation under s. 20.437 (1) (cf) at the end of each fiscal year during which the claim is submitted. No claim for property damage sustained by a foster or family-operated group home parent or a member of a foster or family-operated group home parent’s family may be approved in an amount exceeding $250,000.

Foster parents are not agents of the county for purposes of tort liability. Kara B. v. Dane County, 198 Wis. 2d 24, 542 N.W.2d 777 (Ct. App. 1995), 94–1081.
days from the date on which the child was removed from the home under the voluntary agreement. A group home placement under a voluntary agreement may not exceed 15 days from the date on which the child was removed from the home under the voluntary agreement, except as provided in sub. (5). These periods do not apply to placements made under s. 48.345, 938.183, 938.34, or 938.345. Voluntary agreements may be made only under this subsection and sub. (5) (b) and shall be in writing and shall specifically state that the agreement may be terminated at any time by the parent, guardian, or Indian custodian or by the child if the child's consent to the agreement is required. In the case of an Indian child who is placed under this subsection by the voluntary agreement of the Indian child's parent or Indian custodian, the voluntary consent of the parent or Indian custodian to the placement shall be given as provided in s. 48.028 (5) (a). The child's consent to the agreement is required whenever the child is 12 years of age or older. If a county department, the department, or the department of corrections places a child or negotiates or acts as intermediary for the placement of a child under this subsection, the voluntary agreement shall also specifically state that the county department, department, or department of corrections has placement and care responsibility for the child as required under 42 USC 672 (a) (2) and has primary responsibility for providing services to the child. No person may place a child or offer or hold himself or herself out as able to place a child, except as provided in this section. Enrollment of a child by a parent or guardian in an educational institution and delegation of care and custody of a child to an agent under s. 48.979 do not constitute a placement for the purposes of this section.

(3) (a) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under par. (b) and ss. 48.833, 48.835, 48.837 and 48.839. (b) 1. At the request of a parent having custody of a child and the proposed adoptive parent or parents of the child, the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place the child in the home of the proposed adoptive parent or parents prior to termination of parental rights to the child as provided in subd. 2. or 3., whichever is applicable, and subd. 4. In placing an Indian child for adoption under this subdivision, the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the department, county department, or child welfare agency finds good cause, as described in s. 48.028 (7) (e) departing from that order.

2. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under subd. 1. in the home of a proposed adoptive parent or parents who reside in this state if that home is licensed as a foster home under s. 48.62.

3. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under subd. 1. in the home of a proposed adoptive parent or parents who reside outside this state if the placement is made in compliance with s. 48.98, 48.988, or 48.99, whichever is applicable, if the home meets the criteria established by the laws of the state where the proposed adoptive parent or parents reside for a prospective placement of a child in the home of a nonrelative, and if an appropriate agency in that state has completed an investigation of the home and filed a report and recommendation concerning the home with the department, county department, or licensed child welfare agency.

4. Before a child may be placed under subd. 1., the department, county department, or child welfare agency making the placement and the proposed adoptive parent or parents shall enter into a written agreement that specifies who is financially responsible for the cost of providing care for the child prior to the finalization of the adoption and for the cost of returning the child to the parent who has custody of the child if the adoption is not finalized. Under the agreement, the department, county department, or child welfare agency or the proposed adoptive parent or parents, but not the birth parent of the child or any alleged or presumed father of the child, shall be financially responsible for those costs.

5. Prior to termination of parental rights to the child, no person may coerce a birth parent of the child or any alleged or presumed father of the child into refraining from exercising his or her right to withdraw consent to the transfer or surrender of the child or to termination of his or her parental rights to the child, to have reason- able visitation or contact with the child, or to otherwise exercise his or her parental rights to the child.

(4) A permanency plan under s. 48.38 is required for each child placed in a foster home under sub. (1). If the child is living in a foster home under a voluntary agreement, the agency that negotiated or acted as intermediary for the placement shall prepare the permanency plan within 60 days after the date on which the child was removed from his or her home under the voluntary agreement. A copy of each plan shall be provided to the child if he or she is 12 years of age or over and to the child's parent, guardian, or Indian custodian. If the agency that arranged the voluntary placement intends to seek a court order to place the child outside of his or her home at the expiration of the voluntary placement, the agency shall prepare a revised permanency plan and file that revised plan with the court prior to the date of the hearing on the proposed placement.

(5) (a) Subsection (1) does not apply to the voluntary placement under par. (b) of a child in a group home described in s. 48.625 (1m). Such placements may be made only as provided in par. (b).

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

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

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

2. An agency that places children under par. (b) or that arranges those placements shall contract with another agency licensed under s. 48.61 (3) to place children with or with a county department to review the permanency plans and placements of...
the independent reviewing agency, the child, the parent, guardian, Indian custodian, and local custodian of the child, and the operator of the group home in which the child was placed.


48.64 Placement of children in out−of−home care.

(1) DEFINITION. In this section, “agency” means the department, the department of corrections, a county department, or a licensed child welfare agency authorized to place children in foster homes or group homes or in the homes of relatives other than a parent.

(1m) O U T−O F−H O ME C A R E A G R EEMENTS. If an agency places a child in a foster home or group home or in the home of a relative other than a parent under a court order or places a child in a foster home or group home under a voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home.

The agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency, placing the child or the department, the best interests of the child require release to the agency. If a child has been in a foster home or group home or in the home of a relative other than a parent for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child may not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 applies.

If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing, or medical treatment.

(11) N OTIFICATION OF S CHOOL D ISTRICT. When an agency places a school−age child in a foster home or group home or in the home of a relative other than a parent, the agency shall notify the clerk of the school district in which the foster home, group home, or home of the relative is located that a school−age child has been placed in a foster home, group home, or home of a relative in the school district.

(2) S UPERVISION OF OUT−O F−H O ME C A R E P LAC EM ENTS. Every child who is placed in a foster home or group home shall be under the supervision of an agency. Every child who is placed in the home of a relative other than a parent under a court order shall be under the supervision of an agency.

(4) O RDERS AFFECTING THE HEAD OF HOME OR THE CHILDREN.

(a) Any decision or order issued by an agency that affects the head of a foster home or group home, the head of the home of a relative other than a parent in which a child is placed, or the child involved may be appealed to the department under fair hearing procedures established under rules promulgated by the department. Upon receipt of an appeal, the department shall give the head of the home reasonable notice and an opportunity for a fair hearing. The department may make any additional investigation that the department considers necessary. The department shall give notice of the hearing to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. Each person receiving notice is entitled to be represented at the hearing. At all hearings conducted under this paragraph, the head of the home, or a representative of the head of the home, shall have an adequate opportunity, notwithstanding s. 48.78 (2) (a), to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refuse any testimony or evidence, including an opportunity to confront and cross−examine adverse witnesses. The department shall grant a

NOTE: Subd. 4 is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (b).

5. At the review, any person specified in subd. 4, may present information relevant to the issue of extension and information relevant to the determinations specified in s. 48.38 (5) (c). After receiving that information, the independent reviewing agency shall make the determinations specified in s. 48.38 (5) (c) and determine whether an extension of the child’s placement is in the best interests of the child and whether the child and the parent, guardian, Indian custodian of the child, and the operator of the group home in which the child is placed, together with notice of the issues to be determined as part of the permanency plan review and notice of the fact that those persons shall have a right to be heard at the review by submitting written comments to that agency or the independent reviewing agency before the review or by participating at the review.
interest as a foster parent even when placement of the child cannot be affected by the department. A transcript of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, and the findings of the hearing examiner shall constitute the exclusive record for decision by the department. The department shall make the record available at any reasonable time and at an accessible place to the head of the home or his or her representative. Decisions by the department shall specify the reasons for the decision and identify the supporting evidence. No person participating in an adjudication appealed may participate in the final administrative decision on that action. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the head of the home and to the departmental subunit, county department, or child welfare agency that issued the decision or order. The decision shall be binding on all parties concerned.

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

(c) The circuit court for the county where the dispositional order placing a child in a foster home or group home or in the home of a relative other than a parent was entered or the voluntary agreement under s. 48.63 placing a child in a foster home or group home was made by the department has jurisdiction upon petition of any interested party over the child who is placed in the foster home, group home, or home of the relative. The circuit court may call a hearing, at which the head of the home and the supervising agency under sub. (2) shall be present, for the purpose of reviewing any decision or order of that agency involving the placement and care of the child. If the child has been placed in a foster home or in the home of a relative other than a parent, the foster parent or relative may present relevant evidence at the hearing. The petitioner has the burden of proving by clear and convincing evidence that the decision or order issued by the agency is not in the best interests of the child.


Cross-reference: See also ch. DCF 57, Wis. adm. code.

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

A foster parent is entitled to a hearing under sub. (4) (a) regarding the person’s interest as a foster parent even when placement of the child cannot be affected by the hearing examiner. Binglmeyer v. DHSS, 129 Wis. 2d 805, 804, 383, 418, 1986 a. 176; 1986 a. 206 s. 3; 1989 a. 31, 107; 1993 a. 395, 491; 1995 a. 27 ss. 2595, 9126 (19); 1997 a. 104; 2001 a. 69; 2005 a. 293; 2007 a. 20; 2009 a. 28, 81.

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CHROME'S CODE

48.645 CHILDREN'S CODE

(b) Notwithstanding par. (a), aid under this section may not be granted for placement of a child in a foster home licensed by a governing body of an Indian tribe, for placement of a child in a foster home, group home, subsidized guardianship home, or residential care center for children and youth by a governing body of an Indian tribe or its designee, or for the placement of a child who is a ward of a tribal court if the governing body of the Indian tribe of the tribal court is receiving or is eligible to receive funds from the federal government for that type of placement.

(3) ASSIGNMENT OF SUPPORT. When any person applies for or receives aid under this section, any right of the parent or any dependent child to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time aid is paid under this section, is assigned to the state. If a minor who is a beneficiary of aid under this section is also the beneficiary of support under a judgment or order that includes support for one or more children not receiving aid under this section, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the minor receiving aid under this section, except as otherwise ordered by the court on the motion of a party.

History: 2007 a. 20 ss. 894 to 903; Stats. 2007 s. 48.645; 2007 a. 97 s. 61; 2009 a. 28, 94, 180; 2011 a. 32.

48.647 Second−chance homes. (1) DEFINITIONS. In this section:

(ad) “Cultural competency” means the ability of an individual or private agency to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes, and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or private agency and persons of various cultures who provide services for the individual or private agency.

(ag) “Eligible person” means a person 14 years of age or over, but under 21 years of age, who is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, has an income, not including the income of the person’s parent, guardian, or legal custodian, that is at or below 200% of the poverty line, as defined in s. 49.001 (5), and who, at the time of referral for services under a program funded under this section, meets any of the following requirements:

1. Is a child and is homeless, receiving inadequate care, living in an unsafe or unstable living environment, or otherwise in need of a safe and structured living arrangement.

2. Is a child and meets one or more of the criteria specified in s. 48.13, 938.12, or 938.13 or would be at risk of meeting one or more of those criteria if the child were not placed in a 2nd−chance home.

(b) “Private agency” means an organization operated for profit or a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

(c) “Second−chance home” means a group home described in s. 48.625 (1m).

(2) AWARDING OF GRANTS. (a) From the appropriation under s. 20.437 (1) (f), the department shall distribute not more than $0 in each fiscal year as grants to private agencies to provide 2nd−chance homes and related services to eligible persons who are placed under s. 48.63 (5) in 2nd−chance homes operated by those private agencies. A private agency that is awarded a grant under this paragraph may use the amount awarded under the grant to provide care and maintenance to eligible persons who are placed under s. 48.63 (5) in a 2nd−chance home operated by the private agency; provide services, including the services specified in sub. (3), to eligible persons who currently are or formerly were placed under s. 48.63 (5) in the 2nd−chance home, to the children and families of those eligible persons, and to the noncustodial parents of the children of those eligible persons; and, in the first year of the grant period, pay for the start−up costs, other than capital costs, of the private agency’s program funded under this paragraph.

(b) The department shall award the grants under par. (a) on a competitive basis and according to request−for−proposal procedures that the department shall prescribe in consultation with local health departments, as defined in s. 250.01 (4), and other providers of services to eligible persons. Those request−for−proposal procedures shall include a requirement that a private agency that applies for a grant under par. (a) include in its grant application proof that the private agency has the cultural competency to provide services under the grant to persons and families in the various cultures in the private agency’s target population and that cultural competency is incorporated in the private agency’s policies, administration, and practices. In awarding the grants under par. (a), the department shall consider the need for those grants to be distributed both on a statewide basis and in the areas of the state with the greatest need for 2nd−chance homes and the need to provide placements for children who are voluntarily placed in a 2nd−chance home as well as for children who are placed in a 2nd−chance home by court order.

(c) A private agency that is awarded a grant under par. (a) shall contribute matching funds equal to 25% of the amount awarded under the grant. The match may be in the form of money or in the form of both money and in−kind services, but may not be in the form of in−kind services only.

(d) A private agency that is awarded a grant under par. (a) may use no more than 15% of the amount awarded under the grant to pay for administrative costs associated with the program funded under the grant.

(e) A grant under par. (a) shall be awarded for a 3−year period, except that annually the department shall review the performance of a private agency that is awarded a grant based on performance criteria that the department shall prescribe and may discontinue a grant to a private agency whose performance is not satisfactory to the department based on those criteria.

(3) PROGRAM REQUIREMENTS. A private agency that receives a grant under sub. (2) (a) shall do all of the following:

(a) Operate a 2nd−chance home for the care and maintenance of eligible persons who are children, as defined in s. 48.619.

(b) Maintain a community−wide network for referring eligible persons to the private agency’s program funded under the grant.

(c) Ensure that an eligible person receiving services from the private agency’s program funded under the grant is enrolled in a secondary school or its vocational or technical equivalent or in a college or technical college or is working, unless the director of the private agency determines that there is a good cause for the eligible person not to be so enrolled or working.

(d) Ensure that an eligible person receiving services from the private agency’s program is provided with intake, assessment, case planning, and case management services; skills development training in the areas of economic self−sufficiency, parenting, independent living, and life choice decision making; prenatal and other health care services, including, if necessary, mental health and alcohol and other drug abuse services; child care; and transportation.

(4) EVALUATION. From the appropriation under s. 20.437 (1) (f), the department shall conduct or shall select an evaluator to conduct an evaluation of the grant program under this section and, by June 1 of the 3rd calendar year beginning after the year in which the first grant under this section is awarded, shall submit a report on that evaluation to the governor and to the appropriate standing committees under s. 13.172 (3). The evaluation shall measure the economic self−sufficiency, parenting skills, independent living skills, and life choice decision−making skills of the eligible persons who received services under the program and any changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
other criteria that the department determines to be appropriate for evaluation.

\textit{History:} 2001 a 69; 2003 a 33; 2007 a 20 ss. 1220 to 1229; Stats. 2007 s. 48.647.

\textbf{SUBCHAPTER XV}

\textbf{CHILD CARE PROVIDERS}

\textbf{48.65} Child care centers licensed; fees. (1) No person may for compensation provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day unless that person obtains a license to operate a child care center from the department. To obtain a license under this subsection to operate a child care center, a person must meet the minimum requirements for a license established by the department under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under sub. (3). A license issued under this subsection is valid until revoked or suspended, but shall be reviewed every 2 years as provided in s. 48.66 (5).

(2) This section does not include any of the following:

\begin{itemize}
  \item[(a)] A parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt of a child, whether by blood, marriage, or legal adoption, who provides care and supervision for the child.
  \item[(b)] A public or parochial school or a tribal school.
  \item[(c)] A guardian of a child who provides care and supervision for the child.
  \item[(d)] A county, city, village, town, school district or library that provides programs primarily intended for recreational or social purposes.
\end{itemize}

(3) (a) Except as provided in par. (c), before the department may issue a license under sub. (1) to a child care center that provides care and supervision for 4 to 8 children, the child care center must pay to the department a biennial fee of $60.50. Except as provided in par. (c), before the department may issue a license under sub. (1) to a child care center that provides care and supervision for 9 or more children, the child care center must pay to the department a biennial fee of $30.25, plus a biennial fee of $16.94 per child, based on the number of children that the child care center is licensed to serve. A child care center that wishes to continue a license issued under sub. (1) shall pay the applicable fee under this paragraph by the continuation date of the license. A new child care center shall pay the applicable fee under this paragraph no later than 30 days before the opening of the child care center.

\textit{NOTE:} Par. (a) is shown as amended eff. 7−1−12 by 2011 Wis. Act 209. Prior to 7−1−12 it read:

\begin{itemize}
  \item[(a)] Before the department may issue a license under sub. (1) to a child care center that provides care and supervision for 4 to 8 children, the child care center must pay to the department a biennial fee of $60.50. Before the department may issue a license under sub. (1) to a child care center that provides care and supervision for 9 or more children, the child care center must pay to the department a biennial fee of $30.25, plus a biennial fee of $16.94 per child, based on the number of children that the child care center is licensed to serve. A child care center that wishes to continue a license issued under sub. (1) shall pay the applicable fee under this paragraph by the continuation date of the license. A new child care center shall pay the applicable fee under this paragraph no later than 30 days before the opening of the child care center.
  \item[(b)] A child care center that wishes to continue a license issued under par. (a) and that fails to pay the applicable fee under par. (a) by the continuation date of the license or a new child care center that fails to pay the applicable fee under par. (a) by 30 days before the opening of the child care center shall pay an additional fee of $5 per day for every day after the deadline that the child care center fails to pay the fee.
  \item[(c)] An individual who is eligible for a fee waiver program under s. 45.44 is not required to pay a fee under par. (a) for a license under sub. (1).
\end{itemize}
for revocation and an explanation of the process for appealing the revocation.

(b) If a day [child] care provider certified under sub. (1) is the subject of a pending criminal charge alleging that the person has committed a serious crime, as defined in s. 48.685 (1) (c) 3m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day [child] care provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under sub. (2) shall immediately suspend the certification of the day [child] care provider until the department, county department, or agency obtains information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to be certified under sub. (1).

NOTE: The correct term is shown in brackets. 2009 Wis. Act 76 added the reference to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.


Cross-reference: See also ch. DCF 202, Wis. adm. code.

48.653 Information for child care providers. The department shall provide each child care center licensed under s. 48.65 and each county agency providing child welfare services with a brochure containing information on basic child care and the licensing and certification requirements for child care providers. Each county agency shall provide each child care provider that it certifies with a copy of the brochure.

History: 1983 a. 193; 2009 a. 185.

48.655 Parental access. A child care provider that holds a license under s. 48.685, that is certified under s. 48.651, that holds a probationary license under s. 48.69, or that is established or contracted for under s. 120.13 (14) shall permit any parent or guardian of a child enrolled in the program to visit and observe the program of care at any time during the provider’s hours of operation, unless the visit or observation is contrary to an existing court order.


48.656 Parent’s right to know. Every parent, guardian, or legal custodian of a child who is receiving care and supervision, or of a child who is a prospective recipient of care and supervision, from a child care center that holds a license under s. 48.685 (1), or a probationary license under s. 48.69 has the right to know certain information about the child care center that would aid the parent, guardian, or legal custodian in assessing the quality of care and supervision provided by the child care center.


48.657 Child care center reports. (1) The department shall provide each child care center that holds a license under s. 48.65 (1) or a probationary license under s. 48.69 with an annual report that includes the following information:

(a) Violations of statutes, rules promulgated by the department under s. 48.658 (4) (a) or 48.67, or provisions of licensure under s. 48.70 (1) by the child care center. In providing information under this paragraph, the department may not disclose the identity of any employee of the child care center.

(b) A telephone number at the department that a person may call to complain of any alleged violation of a statute, rule promulgated by the department under s. 48.658 (4) (a) or 48.67, or provision of licensure under s. 48.70 (1) by the child care center.

(c) The results of the most recent inspection of the child care center under s. 48.73.

(2) A child care center shall post the report under sub. (1) next to the child care center’s license or probationary license in a place where the report and the inspection results can be seen by parents, guardians, or legal custodians during the child care center’s hours of operation.

48.658 Child safety alarms in child care vehicles. (1) DEFINITIONS. In this section:

(a) “Child care provider” means a child care center that is licensed under s. 48.651, or a child care program that is established or contracted for under s. 120.13 (14).

(b) “Child care vehicle” means a vehicle that has a seating capacity of 6 or more passengers in addition to the driver, that is owned or leased by a child care provider or a contractor of a child care provider, and that is used to transport children to and from a child care provider.

(c) “Child safety alarm” means an alarm system that prompts the driver of a child care vehicle to inspect the child care vehicle before exiting the child care vehicle.

(2) CHILD SAFETY ALARMS REQUIRED. Before a child care vehicle is placed in service, the child care provider or contractor of a child care provider that is the owner or lessee of the child care vehicle shall have a child safety alarm installed in the child care vehicle. A person who is required under this subsection to have a child safety alarm installed in a child care vehicle shall ensure that the child safety alarm is properly maintained and in good working order each time the child care vehicle is used for transporting children to or from a child care provider.

(3) VIOLATIONS. (a) No person may knowingly transport a child, and no child care provider or contractor of a child care provider that is the owner or lessee of a child care vehicle may knowingly permit a child to be transported, to or from a child care provider in a child care vehicle in which a child safety alarm has not been installed, is not properly maintained, or is not in good working order. In addition to the sanctions and penalties specified in s. 48.715, any person who violates this paragraph may be fined not more than $1,000 or imprisoned for not more than one year in the county jail or both.

(bm) No person may remove, disconnect, tamper with, or otherwise circumvent the operation of a child safety alarm that is installed in a child care vehicle, except for the purpose of testing, repairing, or maintaining the child safety alarm or of replacing or disposing of a malfunctioning child safety alarm. No person may shut off a child safety alarm that is installed in a child care vehicle unless the person first inspects the vehicle to ensure that no child is left unattended in the vehicle. Any person who violates this paragraph is guilty of a Class I felony.

(4) RULES. INFORMATION ABOUT CHILD SAFETY ALARMS. (a) The department shall promulgate rules to implement this section. Those rules shall include a rule requiring the department, when-
ever it inspects a child care provider that is licensed under s. 48.65 (1) or established or contracted for under s. 120.13 (14), and a county department, whenever it inspects a child care provider that is certified under s. 48.651, to inspect the child safety alarm of each child care vehicle that is used to transport children to and from the child care provider to determine whether the child safety alarm is in good working order.

(bm) The department shall make information about child safety alarms available to persons who are required under sub. (2) to have a child safety alarm installed in a child care vehicle. The department may make that information available by posting the information on the department’s Internet site.

History: 2009 a. 19, 185.

48.659 Child care quality rating system. The department shall provide a child care quality rating system that rates the quality of the child care provided by a child care provider licensed under s. 48.65 that receives reimbursement under s. 49.155 for the child care provided or that volunteers for rating under this section. The department shall make the rating information provided under that system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a child care provider that is rated under this section, including making that information available on the department’s Internet site.

History: 2009 a. 28.

SUBCHAPTER XVI
LICENSED PROCEDURES AND REQUIREMENTS FOR CHILD WELFARE AGENCIES, FOSTER HOMES, GROUP HOMES, CHILD CARE CENTERS, AND COUNTY DEPARTMENTS

48.66 Licensing duties of the department. (1) (a) Except as provided in s. 48.715 (6) and (7), the department shall license and supervise child welfare agencies, as required by s. 48.60, group homes, as required by s. 48.625, shelter care facilities, as required by s. 938.22, and child care centers, as required by s. 48.65. The department may license foster homes, as provided by s. 48.62, and may license and supervise county departmental facilities in accordance with the procedures specified in this section and in ss. 48.67 to 48.74. In the discharge of this duty the department may inspect the records and visit the premises of all child welfare agencies, group homes, shelter care facilities, and child care centers and visit the premises of all foster homes in which children are placed.

(b) Except as provided in s. 48.715 (6), the department of corrections may license a child welfare agency to operate a secured residential care center for children and youth, as defined in s. 938.02 (15g), for holding in secure custody juveniles who have been convicted under s. 938.183 or adjudicated delinquent under s. 938.183 or 938.34 (4d), (4h), or (4m) and referred to the child welfare agency by the court or the department of corrections and to provide supervision, care and maintenance for those juveniles.

(c) A license issued under par. (a) or (b), or other than a license to operate a foster home or secured residential care center for children and youth, is valid until revoked or suspended. A license issued under this subsection to operate a foster home or secured residential care center for children and youth may be for any term not to exceed 2 years from the date of issuance. No license issued under par. (a) or (b) is transferable.

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

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

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

(2m) (bm) The department shall make information about child safety alarms available to persons who are required under sub. (2) to have a child safety alarm installed in a child care vehicle. The department may make that information available by posting the information on the department’s Internet site.

History: 2009 a. 19, 185.

(a) 1. Except as provided in subd. 2., the department of corrections shall require each applicant for a license under sub. (1) (b) to operate a secured residential care center for children and youth who is an individual to provide that department with the applicant’s social security number when initially applying for or applying to renew the license.

2. If an applicant who is an individual does not have a social security number, the applicant shall submit a 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. A license issued in reliance upon a false statement submitted under this subdivision is invalid.

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

(2m) (bm) If an applicant who is an individual fails to provide the applicant’s social security number to the department or if an applicant who is not an individual fails to provide the applicant’s federal employer identification number to the department, that department may not issue or renew a license under sub. (1) (b) to operate a secured residential care center for children and youth to or for the applicant unless the applicant does not have a social security number and the applicant submits a statement made or subscribed under oath or affirmation as required under par. (bm) 2.

(2m) (c) The subunit of the department that obtains a social security number or a federal employer identification number under par. (a) 1. may not disclose that information to any person except to the department of revenue for the sole purpose of assessing and collecting taxes and fees under s. 73.1456 and to issuers of social security numbers and other federal and state government agencies.

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

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

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


Cross-reference: See also ch. DCF 57, Wis. adm. code.

48.67 Rules governing child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. The department shall promulgate rules establishing minimum requirements for the issuance of licenses to, and establishing standards for the operation of, child welfare agencies, child care centers, foster homes, group homes, shelter care facilities, and county departments. Those rules shall be designed to protect and promote the health, safety, and welfare of the children in the care of all licensees. The department shall consult with the department of safety and professional services, the department of public instruction, and the child abuse and neglect prevention board prior to promulgating those rules. For foster homes, those rules shall include the rules promulgated under s. 48.62 (8). Those rules shall include rules that require all of the following:

(1) That all child care center licensees, and all employees and volunteers of a child care center, who provide care and supervision for children under one year of age receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome. The rules shall provide that any training in those methods that a licensee has obtained in connection with military service, as defined in s. 111.32 (12g), counts toward satisfying the training requirement under this subsection if the licensee demonstrates to the satisfaction of the department that the training obtained in that connection is substantially equivalent to the training required under this subsection.

NOTE: Sub. (1) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(1) That all child care center licensees, and all employees and volunteers of a child care center, who provide care and supervision for children under one year of age receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, training in the most current medically accepted methods of preventing sudden infant death syndrome.

(2) That all child care center licensees, and all employees and volunteers of a child care center, who provide care and supervision for children under 5 years of age receive, before the date on which the license is issued or the employment or volunteer work commences, whichever is applicable, the training relating to shaken baby syndrome and impacted babies required under s. 253.15 (4) (a) or (c).

(3) (a) That all child care center licensees, and all employees of a child care center, who provide care and supervision for children have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction or through instruction obtained in connection with military service, as defined in s. 111.32 (12g), if the licensee demonstrates to the satisfaction of the department that the instruction obtained in that connection is substantially equivalent to the instruction provided by a person approved under s. 46.03 (38).

 NOTE: Par. (a) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(a) That all child care center licensees, and all employees of a child care center, who provide care and supervision for children have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction.

(b) That all staff members of a group home who provide care for the residents of the group home have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction or through instruction obtained in connection with military service, as defined in s. 111.32 (12g), if the staff member or group home demonstrates to the satisfaction of the department that the instruction obtained in that connection is substantially equivalent to the instruction provided by a person approved under s. 46.03 (38).

 NOTE: Par. (b) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(b) That all staff members of a group home who provide care for the residents of the group home have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction or through instruction obtained in connection with military service, as defined in s. 111.32 (12g), if the staff member or group home demonstrates to the satisfaction of the department that the instruction obtained in that connection is substantially equivalent to the instruction provided by a person approved under s. 46.03 (38), and that all shelter care facilities have readily available on the premises of the shelter care facility a staff member or other person who has that proficiency.

 NOTE: Par. (c) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(c) That all staff members of a shelter care facility who provide care and supervision for children have current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction and that all shelter care facilities have readily available on the premises of the shelter care facility a staff member or other person who has that proficiency.

 NOTE: Par. (d) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(d) That all child welfare agencies that operate a residential care center for children and youth have in each building housing residents of the residential care center for children and youth when those residents are present at least one staff member who has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction or through instruction obtained in connection with military service, as defined in s. 111.32 (12g), if the staff member or child welfare agency demonstrates to the satisfaction of the department that the instruction obtained in that connection is substantially equivalent to the instruction provided by a person approved under s. 46.03 (38).

 NOTE: Par. (d) is shown as amended eff. 6–1–12 by 2011 Wis. Act 120. Prior to 6–1–12 it reads:

(d) That all child welfare agencies that operate a residential care center for children and youth have in each building housing residents of the residential care center for children and youth when those residents are present at least one staff member who has current proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education that is approved under s. 46.03 (38) to provide such instruction.
(4) (a) That all foster parents successfully complete training in the care and support needs of children who are placed in foster care that has been approved by the department. The training shall be completed on an ongoing basis, as determined by the department. The department shall promulgate rules prescribing the training that is required under this subsection and shall monitor compliance with this subsection according to those rules. The training shall include training in all of the following:

1. Parenting skills, including child development; infant care, if appropriate; the effects of trauma on children; communicating with children in an age–appropriate manner; and recognizing issues such as drug use or addiction or attachment disorder.

2. For foster parents caring for children 11 years of age or older, teaching and encouraging independent living skills, including budgeting, health and nutrition, and other skills to promote the child’s long-term economic independence and well-being.

3. Issues that may confront the foster parents, in general, and that may confront the foster parents of children with special needs.


5. The proper use of foster care payments.

6. The availability of resources for foster parents in the local community.

(b) The training under par. (a) shall be completed before the first child is placed with the foster parent.


Cross-reference: See also chs. DCF 52, 56, 57, 59, 250, 251, and 252 Wis. adm. code.

48.675 Foster care education program. (1) DEVELOPMENT OF PROGRAM. The department shall develop a foster care education program to provide specialized training for persons operating family foster homes. Participation in the program shall be voluntary and shall be limited to persons operating foster homes licensed under s. 48.40 (1m), upon request of the kinship care relative, as defined in s. 48.40 (1m), on receipt of the kinship care relative.

(b) The training under par. (a) shall be completed before the first child is placed with the foster parent.

(c) For a foster parent receiving an initial license, the training under par. (a) shall be completed before the first child is placed with the foster parent.


Cross-reference: See also chs. DCF 52, 56, 57, 59, 250, 251, and 252 Wis. adm. code.

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

(a) “Caregiver” means any of the following:

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

am. A person to whom delegation of the care and custody of a child under s. 48.979 has been, or is expected to be, facilitated by an entity.

b. A person who has, or is seeking, a license, certification or contract to operate an entity or who is receiving, or is seeking, payment under s. 48.623 (6) for operating an entity.

2. “Caregiver” does not include any person who is certified as an emergency medical technician under s. 256.15 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 256.15 if the person is employed, or seeking employment, as a first responder.

(am) “Client” means a child who receives direct care or treatment services from an entity or from a caregiver specified in par. (ag) 1. am.

(ar) “Contractor” means, with respect to an entity, a person, or that person’s agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity and a person to whom delega-
tion of the care and custody of a child under s. 48.979 has been facilitated by the entity.

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

(b) “Entity” means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption, or to license foster homes; a foster home that is licensed under s. 48.62; an interim caretaker to whom subsidized guardianship payments are made under s. 48.623 (6); a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child care provider that is certified under s. 48.651; an organization that facilitates delegations of the care and custody of children under s. 48.979; or a temporary employment agency that provides caregivers to another entity.

NOTE: Par. (b) is shown as affected by 2011 Wis. Acts 32 and 87 as and by merged by the legislative reference bureau under s. 13.92 (2) (i).

(bm) “Nonclient resident” means a person who resides, or is expected to reside, at an entity or with a caregiver specified in par. (ag) 1. am., who is not a client of the entity or caregiver, and who has, or is expected to have, regular, direct contact with clients of the entity or caregiver.

(br) “Reservation” means land in this state within the bound-
aries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(c) “Serious crime” means any of the following:


2. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 942.09 (2), 942.09 (1) or (2), 948.03, 948.03 (2), 948.085, 948.085, 948.08 (1) or (2), 948.09, 948.1, 948.155, 948.157, 948.08, 948.085, 948.11 (2) or (a) or (am), 948.12, 948.13, 948.21 (1), 948.30, or 948.53.

3. A violation of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

3m. For purposes of licensing a person to operate a day [child] care center under s. 48.65, certifying a day [child] care provider under s. 48.651, or contracting with a person under s. 120.13 (14) to operate a day [child] care center, or of permitting a person to be a caregiver or nonclient resident of such a day [child] care center or day [child] care provider, any violation listed in subds. 1. to 3. or sub. (5) (br) 1. to 7.

NOTE: The correct term is shown in brackets. 2009 Wis. Act 76 created subd. 3m., with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

4. A violation of the law of any other state or United States jurisdiction that would be a violation listed in subd. 1., 2., 3., or 3m. if committed in this state.

(2) (am) The department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b., a nonclient resident of an entity, and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a child care center that is licensed under s. 48.655 or of a child care provider that is certified under s. 48.651:

NOTE: Par. (am) (intro.) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

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

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

3. Information maintained by the department of safety and professional services regarding the status of the person’s credentials, if applicable.

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

5. Information maintained by the department of health services under this section and under ss. 48.623 (6), 48.651 (2m), 48.75 (1m), 48.979 (1) (b) and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment, at a contract with, or permission to reside at an entity of permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, payments, employment, or permission to reside as described in this subdivision, the department, a county depart-

NOTE: Subd. 5. is shown as affected by 2011 Wis. Acts 32 and 87 as and by merged by the legislative reference bureau under s. 13.92 (2) (i).

(ar) In addition to obtaining the information specified in par. (am) with respect to a person who has, or is seeking, a license to operate a day [child] care center under s. 48.65, certification as a day [child] care provider under s. 48.651, or a contract under s. 120.13 (14) to operate a day [child] care center, a nonclient resident of such an entity, or a person under 18 years of age, but not under 12 years of age, who is a caregiver of such an entity, the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board need not obtain the information specified in subds. 1. to 4.

NOTE: Subd. 5. is shown as affected by 2011 Wis. Acts 32 and 87 as and by merged by the legislative reference bureau under s. 13.92 (2) (i).

1. In addition to obtaining the information specified in par. (am) with respect to a person who has, or is seeking, a license to operate a day [child] care center under s. 48.65, certification as a day [child] care provider under s. 48.651, or a contract under s. 120.13 (14) to operate a day [child] care center, a nonclient resident of such an entity, or a person under 18 years of age, but not under 12 years of age, who is a caregiver of such an entity, the department, a county department, an agency contracted with under s. 48.651 (2), or a school board shall obtain information that is contained in the sex offender registry under s. 301.45 regarding whether the person has committed a sex offense that is a serious crime.

NOTE: The correct term is shown in brackets. 2009 Wis. Act 76 created par. (ar) with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

(b) 1. Every entity shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. a. or am. of the entity and with respect to a nonclient resident of a caregiver specified in sub. (1) (ag) 1. am. of the entity:

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

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

c. Information maintained by the department of safety and professional services regarding the status of the person’s credentials, if applicable.

NOTE: Par. (b) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).
(a) or (am) indicates a change or conviction of a serious crime, information obtained under sub. (6) (am) indicates that the person is not ineligible to be employed at, contracted with, or permitted to reside at an entity or permitted to reside with a caregiver specified under sub. (1) (ag) 1. am. of the entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department, county department, contracted agency, child welfare agency, school board, or entity otherwise has no reason to believe that the person is ineligible to be employed at, contracted with, or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(b) If an entity employs or contracts with a caregiver for whom, within the last year, the information required under par. (b) 1. to c. and e. has already been obtained by another entity, the entity may obtain that information from that other entity, which shall provide the information, if possible, to the requesting entity. If an entity cannot obtain the information required under this paragraph who is a nonclient resident or a prospective nonclient resident within the 3 years preceding the date of the search that person has not been a resident of this state, or if the department, county department, agency contracted with under s. 48.651 (2), child welfare agency, school board, or entity determines that the person’s employment, licensing, or state court records provide a reasonable basis for further investigation, the department, county department, contracted agency, child welfare agency, school board, or entity shall make a good faith effort to obtain from any other or other United States jurisdiction in which the person is a resident or was a resident within the 3 years preceding the date of the search that information that is equivalent to the information specified in par. (am) 1. to c. and e. and the sex of offender registry maintained by any state or other U.S. jurisdiction.

(c) 1. If the person who is the subject of the search under par. (am) is seeking an initial license to operate a foster home or is seeking relicensure after a break in licensure, the department, county department, child welfare agency shall request under 42 USC 16962 (b) a fingerprint–based check of the national crime information databases, as defined in 28 USC 534 (f) (3) (A). If that person is seeking subsidized guardianship payments under s. 48.623 (6), the department in a county having a population of 750,000 or more or county department shall request that fingerprint–based check. The department, county department, or child welfare agency may release any information obtained under this subdivision only as permitted under 42 USC 16962 (e) (3) (A). Notwithstanding par. (am) and (b) 1. to c. and e. with respect to person under 18 years of age whose background information form under sub. (6) (am) indicates that the person is not eligible to be employed at, contracted with, or permitted to reside at an entity or permitted to reside with a caregiver specified under sub. (1) (ag) 1. am. of the entity for a reason specified in sub. (4m) (b) 1. to 5. and with respect to whom the department, county department, contracted agency, child welfare agency, school board, or entity otherwise has no reason to believe that the person is ineligible to be employed at, contracted with, or permitted to reside at an entity for any of those reasons. This paragraph does not preclude the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board from obtaining, at its discretion, the information specified in par. (am) 1. to 5. with respect to a person described in this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.
if the person or adult nonclient resident is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department in a county having a population of 750,000 or more or county department shall conduct that child abuse or neglect registry check. The department, county department, or child welfare agency may not use any information obtained under this subdivision for any purpose other than a search of the person’s background under par. (am).

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

3) (a) Subject to par. (am), every 4 years or at any time within that period that the department, a county department, or a child welfare agency considers appropriate, the department, county department, or child welfare agency shall request the information specified in sub. (2) (b) 1. to 5. for all caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or who are receiving payments under s. 48.623 (6) for operating an entity, and for all persons who are nonclient residents of such a caregiver.

2009 Wis. Acts 76 created subd. 1. with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

NOTE: The correct term is shown in brackets. 2009 Wis. Act 76 created par. (am) with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board has obtained the information required under sub. (2) (am) or (3) (a) or (am) with respect to a person who is a caregiver specified in sub. (1) (ag) 1. b. and that person is also an employee, contractor, or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

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

4m) (a) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (3), the department may not license, or continue or renew the license of, a person to operate an entity, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home under s. 48.62, the department in a county having a population of 750,000 or more or a county department may not provide subsidized guardianship payments to an interim caretaker under s. 48.623 (6), and a school board may not contract with a person under s. 120.13 (14), if the department, county department, contracted agency, child welfare agency, or school board knows or should have known any of the following:

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

NOTE: Subd. 1. is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (h).

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

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

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

(ad) The department, a county department, or a child welfare agency may license a foster home under s. 48.62; the department may license a child care center under s. 48.65; the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may certify a child care provider under s. 48.651; the department in a county having a population of 750,000 or more or a county department may provide subsidized guardianship payments to an interim caretaker under s. 48.623 (6); and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) or (ar) indicating that the person is not ineligible to be licensed, certified, provided payment, or contracted with for a reason specified in par. (a) 1. to 5.

(b) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1) (ag) 1. a. or am. or permit a nonclient resident to reside at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the entity knows or should have known any of the following:
1. That the person has been convicted of a serious crime or, if the person is a caregiver or nonclient resident of a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a child care provider that is certified under s. 48.651, that the person has been convicted of a serious crime or adjudicated delinquent on or after his or her 12th birthday for committing a serious crime or that the person is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday.

**NOTE:** Subd. 1. is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (b). Subd. 2., 3m. and 4. are added by s. 16.61 (2) (d), has made a finding that the person has abused or neglected any client or misappropriated the property of any client.

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

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

(c) If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be employed or contracted with for a reason specified in par. (b) 1. to 5., an entity may employ or contract with the person for not more than 60 days pending the receipt of the information sought under sub. (2) (am) or (b) 1. If the background information form completed by a person under sub. (6) (am) indicates that the person is not ineligible to be permitted to reside at an entity with or with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in par. (b) 1. to 5. and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside at an entity with or with that caregiver for any of those reasons, the entity may permit the person to reside at the entity with or with the caregiver for not more than 60 days pending receipt of the information sought under sub. (2) (am) or (b) 1. An entity shall provide supervision for a person who is employed, contracted with, or permitted to reside as permitted under this paragraph.

(bm) Subject to pars. (bm) and (br), the department may license to operate an entity, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62, the department in a county having a population of 750,000 or more or a county department may provide subsidized guardianship payments under s. 48.623 (6), and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified, or contracted with for a reason specified in sub. (4m) (a) 1. to 5., an entity may employ, contract with, or permit to reside at the entity or permit to reside with a caregiver specified in sub. (1) (ag) 1. am. of the entity a person who otherwise may not be employed, provided payments, contracted with, or permitted to reside at the entity or with that caregiver for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the contracted agency, the child welfare agency, or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the Indian tribe under subch. (5d) a 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

**NOTE:** Par. (a) is shown as affected by 2011 Wis. Acts 32 and 87 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(bm) For purposes of licensing a foster home for the placement of a child on whose behalf foster care maintenance payments under s. 48.62 (4) will be provided or of providing subsidized guardianship payments to an interim caretaker under s. 48.623 (6), no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

1. An offense under ch. 948 that is a felony.
2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5) or (6) or 940.20 (1) or (1m), if the victim is the spouse of the person.
3. A violation of s. 943.23 (1m) (1), 1999 stats., or of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2) or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), 943.23 (1g) or 943.32 (2).

4. A violation of s. 940.19 (3), 1999 stats., or of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), (6), 940.20, 940.203, 940.205, 940.207, or 940.25, a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., 7. or, (7), (2) (d), or (3m), or an offense under ch. 961 that is a felony, if committed not more than 5 years before the date of the investigation under sub. (2) (am).

(br) For purposes of licensing a person to operate a day [child] care center under s. 48.65, certifying a day [child] care provider under s. 48.651, or contracting with a person under s. 120.13 (14) to operate a day [child] care center or of permitting a person to be a nonclient resident or caregiver specified in sub. (1) (ag) 1. a. of a day [child] care center or day [child] care provider, no person who has been convicted or adjudicated delinquent on or after his or her 12th birthday for committing any of the following offenses or who is the subject of a pending criminal charge or delinquency petition alleging that the person has committed any of the following offenses on or after his or her 12th birthday may be permitted to demonstrate that he or she has been rehabilitated.

**NOTE:** The correct term is shown in brackets. 2009 Wis. Act 76 created par. (br) (int.) with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

1. An offense under ch. 948 that is a felony, other than a violation of s. 948.22 (2) or 948.51 (2).
2. A violation of s. 940.19 (3), 1999 stats., or of s. 940.19 (2), (4), (5), or 940.20 (1) or (1m), if the victim is the spouse of the person.
3. A violation of s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.21, 940.225 (1), (2), or (3), 940.23, 940.305, 940.31, 941.20 (2) or (3), 941.21, 943.10 (2), or 943.32 (2).

3m. Except for purposes of permitting a person to be a non-client resident or caregiver specified in sub. (1) (ag) 1. a. of a day [child] care center or day [child] care provider, a violation of s. 943.201, 943.203, 943.32 (2), or 943.38 (1) or (2); or a violation of s. 943.34 (1), 943.395 (1), 943.41 (3) (e), (4) (a), (5) (6), or (6m), 943.45 (1), 943.455 (2), 943.46 (2), 943.47 (2), 943.50 (1m), or 943.70 (2) (a) or (am) or (3) (a) that is a felony; or an offense under subch. IV of ch. 943 that is a felony.

**NOTE:** The correct term is shown in brackets. 2009 Wis. Act 76 created subd. 3m. with the references to “day care” and 2009 Wis. Act 185 changed other references from “day care” to “child care” without taking Act 76 into account. Corrective legislation is pending.

4. A violation of sub. (2), (3), (4m) (b), or (6), if the violation involves the provision of false information to or the intentional withholding of information from the department, a county department, an agency contracting under s. 48.651 (2), a school board, or an entity.

5. An offense involving fraudulent activity as a participant in the Wisconsin Works program under ss. 49.141 to 49.161, including as a recipient of a child care subsidy under s. 49.155, or as a recipient of aid to families with dependent children under s. 49.19, medical assistance under subch. IV of ch. 49, food stamps benefits under the food stamp program under 7 USC 2012 to 2036, supplemental security income payments under s. 48.77, payments under the support of children of supplemental security income recipients under s. 49.775, or health care benefits under the Badger Care health care program under s. 49.665.

6. A violation of s. 125.075 (1), 125.085 (3) (a) 2., 125.105 (2) (b), 125.66 (3), 125.68 (12), 940.09, 940.19 (2), (4), (5), or 940.20, 940.203, 940.205, 940.207, 940.25, or 943.23 (1g), a
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violations of s. 948.51 (2) that is a felony under s. 948.51 (3) (b) or (c), a violation of s. 346.63 (1), (2), (5), or (6) that is a felony under s. 346.65 (2) (am) 5., 6., or 7., or (f), (2) (d), or (3m), or an offense under ch. 961 that is a felony, if the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1.

7. A violation of s. 948.22 (2), if the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the department of corrections, less than 5 years before the date of the investigation under sub. (2) (am) or (b) 1., unless the person has paid all arrearages due and is meeting his or her current support obligations.

(5c) (a) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the department, an agency contracted with under s. 48.651 (2), or a child welfare agency that he or she has been rehabilitated may appeal to the secretary or his or her designee.

Any person who is adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(b) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the county department that he or she has been rehabilitated may appeal to the director of the county department or his or her designee.

Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

(c) Any person who is permitted but fails under sub. (5) (a) to demonstrate to the school board that he or she has been rehabilitated may appeal to the state superintendent of public instruction or his or her designee.

Any person who is adversely affected by a decision of the state superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227.

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

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

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

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

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

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

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

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

(5g) Beginning on January 1, 1999, and annually thereafter, the department shall submit a report to the legislature under s. 13.172 (2) that specifies the number of persons in the previous year who have requested to demonstrate that they have been rehabilitated under sub. (5) (a), the number of persons who successfully demonstrated that they have been rehabilitated under sub. (5) (a) and the reasons for the success or failure of a person who has attempted to demonstrate that he or she has been rehabilitated.

(5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home under s. 48.62, the department in a county having a population of 750,000 or more or a county department may refuse to provide subsidized guardianship payments to a person under s. 48.623 (6), and an entity may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the entity or with a caregiver specified in sub. (1) (ag) 1. am. of the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency, or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a child care center, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.61 (2), to refuse to contract with a child care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14), and a child care center that is licensed under s. 48.651 or established or contracted for under s. 120.13 (14) or a child care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the child care center or child care provider if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department, county department, contracted agency, school board, child care center, or child care provider, substantially related to the care of a client.

NOTE: Sub. (5m) is shown as affected by 2011 Wis. Acts 32 and 87 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(b) The department shall require any person who applies for issuance, renewal or a license to operate an entity, the department in a county having a population of 500,000 or more, a county department, or an agency contracted with under s. 48.651 (2) shall require any child care provider who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home under s. 48.62, the department or a county department or a child care provider by the department.

NOTE: Sub. (5m) is shown as affected by 2011 Wis. Acts 32 and 87 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

1. For caregivers who are licensed by the department, for persons under 18 years of age, who not under 12 years of age, who are caregivers of a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a child care provider that is certified under s. 48.651 for persons who are nonresident of an entity that is licensed by the department, and for other persons specified by the department by rule, the entity shall send the background information form to the department.
2. For caregivers who are licensed or certified by a county department or an agency contracted with under s. 48.651 (2), for persons who are nonresident elements of an entity that is licensed or certified by a county department or an agency contracted with under s. 48.651 (2), and for other persons specified by the department by rule, the entity shall send the background information form to the county department or contracted agency.

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

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

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

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

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

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

(8) The department, the department of health services, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board may charge a fee for obtaining the information required under sub. (2) (a), (b) or (c), or (3) (a) or (am) or for providing information to an entity to enable the entity to comply with sub. (b) (1) or (3) (b). The fee may not exceed the reasonable cost of obtaining the information. No fee may be charged to a nurse aide, as defined in s. 146.40 (1) (d), for obtaining or maintaining information if to do so would be inconsistent with federal law.


48.715 Sanctions and penalties. (1) In this section, “licensee” means a person who holds a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a child welfare agency, shelter care facility, group home, or child care center.

(2) If the department provides written notice of the grounds for a sanction, an explanation of the types of sanctions that may be imposed under this subsection and an explanation of the process for appealing a sanction imposed under this subsection, the department may order any of the following sanctions:

(a) That a person stop operating a child welfare agency, shelter care facility, group home, or child care center if the child welfare agency, shelter care facility, group home, or child care center is without a license in violation of s. 48.66 (1) (a) or a probationary license in violation of s. 48.69.

(b) That a person who employs a person who has had a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 revoked within the previous 5 years terminate the employment of that person within 30 days after the date of the order. This paragraph includes employment of a person in any capacity, whether as an officer, director, agent or employee.

(c) That a licensee stop violating any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.658 (4) (a) or 48.67.

(d) That a licensee submit a plan of correction for violation of any provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.658 (4) (a) or 48.67.

(e) That a licensee implement and comply with a plan of correction provided by the department or previously submitted by the licensee and approved by the department.

(f) That a licensee close the intake of any new children until all violations of the provisions of licensure under s. 48.70 (1) and the rules promulgated by the department under s. 48.658 (4) (a) or 48.67 are corrected.

(g) That a licensee provide training for the licensee’s staff members as specified by the department.

(3) If the department provides written notice of the grounds for a penalty, an explanation of the types of penalties that may be imposed under this subsection, and an explanation of the process for appealing a penalty imposed under this subsection, the department may impose any of the following penalties against a licensee or any other person who violates a provision of licensure under s. 48.70 (1) or rule promulgated by the department under s. 48.658 (4) (a) or 48.67 or who fails to comply with an order issued under sub. (2) by the time specified in the order:

(a) A daily forfeiture amount per violation of not less than $10 nor more than $1,000. All of the following apply to a forfeiture under this paragraph:

1. Within the limits specified in this paragraph, the department may, by rule, set daily forfeiture amounts and payment deadlines based on the size and type of facility or agency and the seriousness of the violation. The department may set daily forfeiture amounts that increase periodically within the statutory limits if
there is continued failure to comply with an order issued under sub. (2).

2. The department may directly assess a forfeiture imposed under this paragraph by specifying the amount of that forfeiture in the notice provided under this subsection.

3. A person against whom the department has assessed a forfeiture shall pay that forfeiture to the department within 10 days after receipt of notice of the assessment or, if that person contests the assessment under s. 48.72, within 10 days after receipt of the final decision after exhaustion of administrative review or, if that person petitions for judicial review under ch. 227, within 10 days after receipt of the final decision after exhaustion of judicial review. The department shall remit all forfeitures paid under this subdivision to the secretary of administration for deposit in the school fund.

4. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this paragraph that has not been paid as provided in subd. 3. The only contestable issue in an action under this subdivision is whether or not the forfeiture has been paid.

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

(c) Refusal to continue a license or a probationary license.

(d) Revocation of a license or a probationary license as provided in sub. (4).

4. If the department provides written notice of revocation and the grounds for revocation as provided in sub. (4m) and an explanation of the process for appealing a revocation under this subsection, the department may revoke a license issued under s. 48.66 (1) (a) or a probationary license issued under s. 48.69 for any of the following reasons:

(a) The department has imposed a penalty on the licensee under sub. (3) and the licensee or a person under the supervision of the licensee either continues to violate or resumes violation of a rule promulgated under s. 48.658 (4) (a) or 48.67, a provision of licensure under s. 48.70 (1), or an order under this section forming any part of the basis for the penalty.

(b) The licensee or a person under the supervision of the licensee has committed a substantial violation, as determined by the department, of a rule promulgated under s. 48.658 (4) (a) or 48.67, a provision of licensure under s. 48.70 (1), or an order under this section.

(c) The licensee or a person under the supervision of the licensee has committed an action or has created a condition relating to the operation or maintenance of the child welfare agency, shelter care facility, group home, or child care center that directly threatens the health, safety, or welfare of any child under the care of the licensee.

(d) The licensee or a person under the supervision of the licensee has violated, as determined by the department, a rule promulgated under s. 48.658 (4) (a) or 48.67, a provision of licensure under s. 48.70 (1), or an order under this section.

(e) The licensee or a person under the supervision of the licensee has violated previously.

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

4. If a person who has been issued a license under s. 48.66 (1) (a) or a probationary license under s. 48.69 to operate a day [child] care center is convicted of a serious crime, as defined in s. 48.685 (1) (c) 5m., or if a caregiver specified in s. 48.685 (1) (ag) 1. a. or a nonclient resident, as defined in s. 48.685 (1) (bm), of the day [child] care center is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, the department shall revoke the license of the day [child] care center immediately upon providing written notice of revoca-

48.72 Appeal procedure. Except as provided in s. 48.715 (6) and (7), any person aggrieved by the department’s refusal or failure to issue, renew, or continue a license or by any action taken by the department under s. 48.715 has the right to an administrative hearing provided for contested cases in ch. 227. To receive an administrative hearing under ch. 227, the aggrieved person

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shall send to the department a written request for a hearing under s. 227.44 within 10 days after the date of the department’s refusal or failure to issue, renew, or continue a license or the department’s action taken under s. 48.715. The department shall hold an administrative hearing under s. 227.44 within 30 days after receipt of the request for the administrative hearing unless the aggrieved person consents to an extension of that time period. Judicial review of the department’s decision may be had by any party in the contested case as provided in ch. 227.


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

History: 1979 c. 300; 1993 a. 446; 2009 a. 28, 185.

48.735 Immunization requirements; child care centers. The department, after notice to a child care center licensee, may suspend, revoke, or refuse to continue a child care center license where in any case in which the department finds that there has been a substantial failure to comply with the requirements of s. 48.65.

History: 1989 a. 120; 1993 a. 27; 1997 a. 27; 2009 a. 185.

48.737 Lead screening, inspection and reduction requirements; child care centers. The department, after notice to a child care provider certified under s. 48.651, or a child care center that holds a license under s. 48.65 or a probationary license under s. 48.69, may suspend, revoke, or refuse to renew or continue a license or certification in any case in which the department finds that there has been a substantial failure to comply with any rule promulgated under s. 254.162, 254.168, or 254.172.

History: 1993 a. 450, 491; 1997 a. 27; 2009 a. 185.

48.74 Authority of department to investigate alleged violations. Whenever the department is advised or has reason to believe that any person is violating any of the provisions of ss. 48.60, 48.62, 48.625 or 48.65, it shall make an investigation to determine the facts. For the purposes of this investigation, it shall have authority to inspect the premises where the violation is alleged to occur. If it finds that the person is violating any of the specified sections, it may either issue a license if the person is qualified or may institute a prosecution under s. 48.76.

History: 1979 c. 300.

48.743 Community living arrangements for children. (1) In this section, “community living arrangement for children” means a residential care center for children and youth or a group home.

(2) Community living arrangements for children shall be subject to the same building and housing ordinances, codes, and regulations of the municipality or county as similar residences located in the area in which the facility is located.

(3) The department shall designate a subunit to keep records and supply information on community living arrangements for children and for coordinating all necessary investigatory and disciplinary actions under the laws of this state and under the rules of the department relating to the licensing of community living arrangements for children.

(4) A community living arrangement for children with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single–family or 2–family residences. A community living arrangement for children with a capacity for 15 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to more than 2–family residences. Covenants in deeds which expressly prohibit use of property for community living arrangements for children are void against public policy.

(5) If a community living arrangement for children is required to obtain special zoning permission, as defined in s. 59.69 (15) (g), the department shall, at the request of the unit of government responsible for granting the special zoning permission, inspect the proposed facility and review the program proposed for the facility. After such inspection and review, the department shall transmit to the unit of government responsible for granting the special zoning permission a statement that the proposed facility and its proposed program have been examined and are either approved or disapproved by the department.

History: 2007 a. 20.

A holding that a community living arrangement with a capacity of 10 persons was not barred by a deed covenant limiting use to a single–family residence. Crowley v. Knapp, 94 Wis. 2d 421, 288 N.W.2d 815 (1980). See also Overlook Farms v. Alternative Living, 143 Wis. 2d 485, 422 N.W.2d 131 (Ct. App. 1988).

48.745 Formal complaints regarding child welfare agencies and group homes. (1) If a complaint is received by a child welfare agency operating a residential care center for children and youth or by a group home, the licensee shall attempt to resolve the complaint informally. Failing such resolution, the licensee shall inform the complaining party of the procedure for filing a formal complaint under this section.

(2) Any individual may file a formal complaint under this section regarding the general operation of a residential care center for children and youth or group home and shall not be subject to reprisals for doing so. All formal complaints regarding residential care centers for children and youth and group homes shall be filed with the county department on forms supplied by the county department unless the county department designates the department to receive formal complaints. The county department shall investigate or cause to be investigated each formal complaint. Records of the results of each investigation and the disposition of each formal complaint shall be kept by the county department and filed with the subunit of the department that licenses residential care centers for children and youth and group homes.

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

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

(5) If the county department designates the department to receive formal complaints, the subunit under s. 48.743 (3) shall receive the complaints and the department shall have all the powers and duties granted to the county department in this section.


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

(1d) Child welfare agencies, if licensed to do so by the department, and public licensing agencies may license foster homes under the rules promulgated by the department under s. 48.67 governing foster homes. A foster home license shall be issued for a term not to exceed 2 years from the date of issuance, is not transferable, and may be revoked by the child welfare agency or by the public licensing agency because the licensee has substantially and intentionally violated any provision of this chapter or of the rules of the department promulgated under s. 48.67

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**or because the licensee fails to meet the minimum requirements for a license. The licensee shall be given written notice of any revocation and the grounds for the revocation.**

**(1g)** (a) A public licensing agency may license a foster home only if the foster home is located in the county of the public licensing agency, except that a public licensing agency may license a foster home located in another county if any of the following applies:

1. The person who will be licensed to operate the foster home is a relative or a guardian of the child who will be placed in the foster home.

2. A foster parent licensed by the public licensing agency moves to the other county with a child who has been placed in the foster parent's home and the license will allow the foster parent to continue to care for that child.

3. The county of the public licensing agency issuing the license and the county in which the foster home is located are contiguous.

4. The county of the public licensing agency issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833 (1), 48.835, or 48.837.

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

(b) A license issued under this subsection shall specifically identify each child to be placed in the foster home and shall terminate on the removal of all of those children from the foster home.

(c) No license may be issued under par. (a) 1., 2., or 3. unless the public licensing agency issuing the license has notified the public licensing agency of the county in which the foster home will be located of its intent to issue the license and no license may be issued under par. (a) 2. or 3. unless the 2 public licensing agencies have entered into a written agreement under this paragraph. A public licensing agency is not required to enter into any agreement under this paragraph allowing the public licensing agency of another county to license a foster home within its jurisdiction. The written agreement shall include all of the following:

1. A statement that the public licensing agency issuing the license has placement and care responsibility for the child as required under 42 USC 672 (a) and has primary responsibility for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the public licensing agency issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(cm) Notwithstanding that a written agreement under par. (c) is not required for the issuance of a license under par. (a) 1., the public licensing agency issuing the license shall have the responsibilities specified in par. (c) 1., shall be responsible for the costs specified in par. (c) 2., and shall have in place the procedures specified in par. (c) 3.

(d) If the public licensing agency issuing a license under par. (a) 2. or 3. violates the agreement under par. (c), the public licensing agency of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the public licensing agency that issued the license to remove the child from the foster home within 30 days after receipt, by the public licensing agency that issued the license, of notification of the termination of the agreement.

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

(1r) At the time of initial licensure and license renewal, the child welfare agency or public licensing agency issuing a license under sub. (1d) or (1g) shall provide the licensee with written information related to the monthly foster care rates and supplemental payments specified in s. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments, and the procedures for applying for supplemental payments.

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


48.76  **Penalties.** In addition to the sanctions and penalties provided in s. 48.715, any person who violates s. 48.60, 48.62, 48.625, 48.63 or 48.65 may be fined not more than $500 or imprisoned for not more than one year in county jail or both.

History: 1977 c. 418 s. 929 (18); 1979 c. 300; 1991 a. 275; 1993 a. 375.

48.77  **Injunction against violations.** In addition to the penalties provided in s. 48.76, the circuit courts shall have jurisdiction to prevent and restrain by injunction violations of s. 48.60, 48.62, 48.625, 48.63 or 48.65. It shall be the duty of the district attorneys, upon request of the department, to institute action for such injunction under ch. 813.

History: Sup. Ct. Order, 67 Wis. 2d 585, 773 (1975); 1977 c. 418 s. 929 (18); 1979 c. 300.

**SUBCHAPTER XVII**

**GENERAL PROVISIONS ON RECORDS**

48.78  **Confidentiality of records.** (1) In this section, unless otherwise qualified, "agency" means the department, a county department, a licensed child welfare agency, or a licensed child care center.

(2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual who is or was in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or 5(m) (d), 48.396 (3) (b) or (c) 1., 48.432, 48.433, 48.48 (17) (b), 48.57 (2m), 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

NOTE: Par. (a) is shown as affected by 2 acts of the 2009 Wisconsin legislature as and merged by the legislative reference bureau under s. 139.2 (2) (b).

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or older, to the parent, guardian, legal custodian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

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

(ama) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission.

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unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

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

(b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school, or a private school regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not apply to the confidential exchange of information between an agency and officials of a tribal school regarding an individual in the care or legal custody of the agency if the agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner at least as stringent as is required of a public school official under s. 118.125.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of the department or county department under s. 48.34 (4m), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 and placed in a state prison under s. 48.366 (8).
4. On probation to the department of corrections under s. 973.09.
5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of safety and professional services or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of safety and professional services and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that disclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(b) Paragraph (a) does not prohibit the department, a county department, or a licensed child welfare agency from entering the content of any record kept or information received by the department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 48.47 (7g) or the department from transferring any information maintained in that system to the court under s. 48.396 (3) (b). If the department transfers that information to the court, the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(i) Paragraph (a) does not prohibit an agency from disclosing information to a relative of a child placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the child and the relative or a placement of the child with the relative or from disclosing information under s. 82.21 (5) (e), 48.355 (2) (cm), or 48.357 (2v) (d). In this paragraph, “relative” includes a relative whose relationship is derived through a parent of the child whose parental rights are terminated.

(j) Paragraph (a) does not prohibit an agency from disclosing information to any public or private agency in this state or any other state that is investigating a person for purposes of licensing the person to operate a foster home or placing a child for adoption in the home of the person.


The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under s. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under s. 48.78 (2) (a) or 938.78 (2) (a) involved in permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramiro M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03–3018.

SUBCHAPTER XVIII
COMMUNITY SERVICES

48.79 Powers of the department. The department has authority and power:

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

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

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

(7) To assist localities in securing needed specialized services such as medical, psychiatric, psychological and social work services when existing agencies are not able to supply them.
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(8) To assist localities in making surveys of needs and available resources.
(9) To assist in appraising the achievement of local programs.
(10) To serve in a general consultative capacity, acting as a clearing house, developing materials, arranging conferences and participating in public addresses and radio programs.


48.80 Municipalities may sponsor activities. (1) Any municipality is hereby authorized and empowered to sponsor the establishment and operation of any committee, agency or council for the purpose of coordinating and supplementing the activities of public and private agencies devoted in whole or in part to the welfare of youth therein. Any municipality may appropriate, raise and expend funds for the purpose of establishing and of providing an executive staff to such committees, agencies or councils; may levy taxes and appropriate money for recreation and welfare projects; and may also receive and expend moneys from the state or federal government or private persons for such purposes.

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

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

SUBCHAPTER XIX
ADOPTION OF MINORS; GUARDIANSHIP

48.81 Who may be adopted. Any child who is present in this state at the time the petition for adoption is filed may be adopted if any of the following criteria are met:

(1) Both of the child’s parents are deceased.
(2) The parental rights of both of the child’s parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.
(3) The parental rights of one of the child’s parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.

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

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

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


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

48.82 Who may adopt. (1) The following persons are eligible to adopt a minor if they are residents of this state:

(a) A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the minor.
(b) An unmarried adult.

(3) When practicable and if requested by the birth parent, the adoptive parents shall be of the same religious faith as the birth parents of the person to be adopted.

(4) No person may be denied the benefits of this subchapter because of a religious belief in the use of spiritual means through prayer for healing.

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

(6) No otherwise qualified person may be denied the benefits of this subchapter because of his or her race, color, ancestry or national origin.


Standing to object to adoption proceedings turns on the right to petition for adoption. Grandparents excluded from petitioning under s. 48.90 (1) (a) had no standing to object to the adoption of their grandchildren. Adoption of J.C.G. 177 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

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

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

(b) “Another jurisdiction” means a state of the United States other than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States or an Indian tribe.

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

(a) Advertise for the purpose of finding a child to adopt.
(b) Advertise that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child.
(c) Advertise that the person will place a child for adoption.
(3) This section does not apply to any of the following:

(a) The department, a county department or a child welfare agency licensed under s. 48.60 to place children for adoption.
(b) An individual or agency providing adoption information under s. 48.55.
(c) A foster care and adoption resource center funded by this state or a postadoption resource center funded by this state.

(d) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department, a county department or a child welfare agency licensed under s. 48.60 or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes.

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

(3m) No person may publish by a public medium an advertisement that violates this section. If the owner, agent, or employee of the public medium receives a copy of the license of the person or agency requesting the advertisement that indicates that the person or agency is licensed to provide adoption services in this state, there is a rebuttable presumption that the advertisement does not violate this section.

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

(5) Any person who violates sub. (2) or (3m) may be fined not more than $10,000 or imprisoned not more than 9 months or both.

History: 1997 a. 104; 1999 a. 9; 2002 a. 293; 2009 a. 94.

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

48.83 Jurisdiction and venue. (1) Except as provided in s. 48.028 (3) (b), the court of the county where the proposed adoptive parent or child resides, upon the filing of a petition for adoption or for the adoptive placement of a child, has jurisdiction over the child until the petition is withdrawn, denied, or granted. Venue shall be in the county where the proposed adoptive parent or child resides at the time the petition is filed. The court may transfer the case to a court in the county in which the proposed adoptive parents reside.

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

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48.831 Appointment of guardian for child without a living parent for adoptability finding. (1) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of a child who does not have a living parent if a finding as to the adoptability of a child is sought. Except as provided in ss. 48.977 and 48.978, ch. 54 applies to the appointment of a guardian for a child who does not have a living parent for all other purposes. An appointment of a guardian of the estate of a child who does not have a living parent shall be conducted in accordance with the procedures specified in ch. 54.

(1m) PETITION. Any of the following may file a petition for appointment of a guardian for a child who is believed to be in need of protection or services because he or she is without a living parent as described under s. 48.13 (1):

(a) The department.

(b) A county department.

(c) A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

(d) A relative or family member of the child or a person whom the child has resided with and who has also acted as a parent of the child.

(e) A guardian appointed under ch. 54 or ch. 880, 2003 stats., whose resignation as guardian has been accepted by a court under s. 54.54 (1) or s. 880.17 (1), 2003 stats.

(1r) NOTICE. When a petition is filed under sub. (1m), the court shall provide notice of the fact-finding hearing under sub. (3) to all interested parties as provided in s. 48.27 (6). If the court knows or has reason to know that the child is an Indian child, the court shall provide notice to the Indian child’s Indian custodian, if any, and tribe, if known, in the manner specified in s. 48.028 (4) (a). No hearing may be held under sub. (3) until at least 10 days after receipt of the notice by the Indian child’s Indian custodian and tribe or, if the identity or location of the Indian child’s Indian custodian or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian child’s Indian custodian or tribe, the court shall grant a continuation of up to 20 additional days to enable the requester to prepare for the hearing.

(2) REPORT. If the department, county department, or child welfare agency files a petition, the court shall order the department, county department, or child welfare agency to file a report with the court containing as much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If the petition is filed by a relative or other person specified under sub. (1m) (d), the court shall order the department or a child welfare agency, if the department or agency consents, or a county department to file a report containing the information specified in this subsection. If the child is an Indian child, the court may order the department, county department, or child welfare agency, or request the tribal child welfare department of the Indian child’s tribe, if that department consents, to file a report containing the information specified in this subsection. The department, county department, child welfare agency, or tribal child welfare department, if that department consents, shall file the report at least 5 days before the date of the fact-finding hearing on the petition.

(3) FACT-FINDING HEARING. The court shall hold a fact-finding hearing on the petition, at which any party may present evidence relevant to the issue of whether the child has a living parent. If the court finds that the child has a living parent, the court shall dismiss the petition or grant the petitioner leave to amend the petition to a petition under s. 48.42 (1).

(4) DISPOSITIONAL HEARING. (a) If the court, at the conclusion of the fact-finding hearing, finds that the child has no living parent, the court shall proceed to a dispositional hearing. Any party may present evidence, including expert testimony, relevant to the issue of disposition. In determining the appropriate disposition, the court shall consider any factors under s. 48.426 (3) (a) to (d) that are applicable.

(b) If the court finds that adoption is in the child’s best interest, the court shall order that the child be placed in the guardianship and custody of one of the following:

1. A county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).

2. A child welfare agency licensed under s. 48.61 (5) to accept guardianship.

3. The department.

(c) If the court finds that adoption is not in the child’s best interest, the court shall order that the child be placed in the guardianship of the department and place the child in the custody of a county department or, in a county having a population of 500,000 or more, the department or an agency under contract with the department.

(cm) If the child is an Indian child who is in the custody of an Indian custodian, the court may not remove the child from the custody of the Indian custodian under par. (c) unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and the court finds that active efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian child’s family and that those efforts have proved unsuccessful. In placing an Indian child following a transfer of guardianship and custody under par. (b) or (c), the custodian appointed under par. (b) or (c) shall comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless there is good cause, as described in s. 48.028 (7) (e), for departing from that order.

(d) Section 48.43 (5), (5m) and (7) applies to orders under pars. (b) and (c).

(e) The court shall order the custodian appointed under par. (b) or (c) to prepare a permanency plan under s. 48.38 for the child within 60 days after the date of the order. A permanency plan ordered under this paragraph is subject to review under s. 48.38 (5). In preparing a permanency plan, the department, county department or child welfare agency need not include any information specified in s. 48.38 (4) that relates to the child’s parents or returning the child to his or her home. In reviewing a permanency plan, a court or panel need not make any determination under s. 48.38 (5) (c) that relates to the child’s parents or returning the child to his or her home.

History: 1989 a. 161; 1995 a. 73, 275; 1997 a. 27, 334; 2005 a. 387; 2009 a. 94.

48.832 Transfer of guardianship upon revocation of guardian’s license or contract. If the department revokes the license of a county department licensed under s. 48.57 (1) (hm) to accept guardianship, or of a child welfare agency licensed under s. 48.61 (5) to accept guardianship, or if the department terminates the contract of a county department licensed under s. 48.57 (1) (hm) to accept guardianship, the department shall file a motion in the court that appointed the guardian for each child in the guardianship of the county department or agency, requesting that the court transfer guardianship and custody of the child. The motion may specify a county department or child welfare agency that has consented to accept guardianship of the child. The court shall transfer guardianship and custody of the child either to the county department or child welfare agency specified in the motion or to another county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5) which consents to the transfer. If no county department or child welfare agency consents, the court shall transfer guardianship and custody of the child to the department.

History: 1989 a. 161; 1997 a. 27.
48.833 Placement of children for adoption by the department, county departments, and child welfare agencies. (1) PLACEMENT BY DEPARTMENT OR COUNTY DEPARTMENT. The department or a county department under s. 48.57 (1) (e) or (hm) may place a child for adoption in a licensed foster home without a court order under s. 48.63 (3) (b) or if the department or county department is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the pre-adoption preparation required under s. 48.84 (1) or the department or county department determines that the proposed adoptive parents are not required to complete that preparation. When a child is placed under this subsection in a licensed foster home for adoption, the department or county department making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home for adoption by the proposed adoptive parent.

(2) PLACEMENT BY CHILD WELFARE AGENCY. A child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home without a court order under s. 48.63 (3) (b) or if the child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the pre-adoption preparation required under s. 48.84 (1) or the child welfare agency determines that the proposed adoptive parents are not required to complete that preparation. When a child is placed under this subsection in a licensed foster home for adoption, the child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home for adoption by the proposed adoptive parent.

(3) INDIAN CHILD; PLACEMENT PREFERENCES. In placing an Indian child for adoption under sub. (1) or (2), the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (e), unless the department, county department, or child welfare agency finds good cause, as described in s. 48.028 (7) (e), for departing from that order.


48.834 Placement of children with relatives or siblings for adoption by the department, county departments, and child welfare agencies. (1) PLACEMENT WITH RELATIVES. Before placing a child for adoption under s. 48.833, the department, county department under s. 48.57 (1) (e) or (hm), or child welfare agency making the placement shall consider the availability of a placement for adoption with a relative of the child who is identified in the child’s permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department, or child welfare agency.

(2) PLACEMENT WITH SIBLINGS. If a child who is being placed for adoption under s. 48.833 has one or more siblings, as defined in s. 48.38 (4) (br) 1., who have been adopted or who have been placed for adoption, the department, county department under s. 48.57 (1) (e) or (hm), or child welfare agency making the placement shall make reasonable efforts to place the child for adoption with an adoptive parent or proposed adoptive parent of such a sibling who is identified in the child’s permanency plan under s. 48.38 or 938.38 or who is otherwise known by the department, county department, or child welfare agency, unless the department, county department, or child welfare agency determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the department, county department, or child welfare agency shall make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the department, county department, or child welfare agency determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

History: 2005 a. 448; 2009 a. 79.

48.835 Placement of children with relatives for adoption. (1) DEFINITION. In this section and s. 48.837, “custody” means physical custody of a child by the child’s parent not in violation of a custody order issued by a court. “Custody” does not include physical custody of a child during a period of physical placement with a parent who does not have legal custody of the child.

(2) ADOPTIVE PLACEMENT. A parent having custody of a child may place the child for adoption in the home of a relative of the child without a court order.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED: EXCEPTION. (a) If the child’s parent has filed a petition for the termination of parental rights under s. 48.42, the relative with whom the child is placed shall file a petition for the termination of the parents’ rights at the same time the petition for adoption is filed, except as provided under par. (b).

(b) If the person filing the adoption petition is a stepparent with whom the child and the child’s parent reside, the stepparent shall file only a petition to terminate the parental rights of the parent who does not have custody of the child.

(4) HEARINGS. Notwithstanding s. 48.90 (1) (a), the court may hold the hearing on the adoption petition immediately after entering the order to terminate parental rights under s. 48.427 (3).


Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.2d 359 (Ct. App. 1992).

Grandparents excluded from petitioning under s. 48.835 (1) (a) had no standing under this section to object to the adoption of their grandchildren. In re J.C.G. 177 Wis. 2d 424, 501 N.W.2d 908 (Ct. App. 1993).

48.837 Placement of children with nonrelatives for adoption. (1) IN-STATE ADOPTIVE PLACEMENT. When the proposed adoptive parent or parents of a child reside in this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of the proposed adoptive parent or parents if the home is licensed as a foster home under s. 48.62.

(1m) OUT-OF-STATE ADOPTIVE PLACEMENT. Subject to ss. 48.98, 48.988, and 48.99, when the proposed adoptive parent or parents of a child reside outside this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of the proposed adoptive parent or parents, if the home meets the criteria established by the laws of the other state for a preadoptive placement of a child in the home of a nonrelative.

(1r) PLACEMENT PRIOR TO PETITION. (a) At the request of a parent having custody of a child and the proposed adoptive parent or parents of the child, the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place the child in the home of the proposed adoptive parent or parents prior to the filing of a petition under sub. (2) as provided in par. (b) or (c), whichever is applicable, and par. (d). In placing an Indian child for adoption under this paragraph, the department, county department, or child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the department, county department, or child welfare agency finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(b) The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under par. (a) in the home of a proposed adoptive parent or parents who reside in this state if that home is licensed as a foster home under s. 48.62.

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?"
(c) The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under par. (a) in the home of a proposed adoptive parent or parents who reside outside this state if the placement is made in compliance with s. 48.98, 48.986, or 48.99, whichever is applicable, if the home meets the criteria established by the laws of the state where the proposed adoptive parent or parents reside for a preadoptive placement of a child in the home of a nonrelative, and if an appropriate agency in that state has completed an investigation of the home and filed a report and recommendation concerning the home with the department, county department, or licensed child welfare agency.

(d) Before a child may be placed under par. (a), the department, county department under s. 48.19 (1) (c) or (hm), or a child welfare agency making the placement and the proposed adoptive parent or parents shall enter into a written agreement that specifies who is financially responsible for the costs of providing care for the child prior to the finalization of the adoption and for the cost of returning the child to the parent who has custody of the child if the adoption is not finalized. Under the agreement, the department, county department, or child welfare agency or the proposed adoptive parent or parents, but not the birth parent of the child or any alleged or presumed father of the child, shall be financially responsible for those costs.

(e) Prior to termination of parental rights to the child, no person may coerce a birth parent of the child or any alleged or presumed father of the child into refraining from exercising his or her right to visitation or consent to the transfer of the child or to termination of his or her parental rights to the child, to have reasonable visitation or contact with the child, or to otherwise exercise his or her parental rights to the child.

(2) PETITION FOR PLACEMENT. The petition for adoptive placement shall be verified and shall allege all of the following:

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

(b) The name, address and age of the birth parents and the proposed adoptive parents.

(c) The identity of any person or agency which solicited, negotiated or arranged the placement of the child with the proposed adoptive parents.

(d) That the proposed adoptive parents have completed the preadoptive preparation required under s. 48.84 (1) or are not required to complete that preparation.

(e) If the child is an Indian child, the names and addresses of the Indian child's Indian custodian, if any, and tribe, if known.

(3) PETITION FOR TERMINATION OF PARENTAL RIGHTS REQUIRED. The petition under sub. (2) shall be filed with a petition under s. 48.42 for the voluntary consent to the termination of any existing rights of the petitioning parent or parents.

(4) RESPONSIBILITIES OF COURT. On the filing of the petitions under this section the court:

(a) Shall hold a hearing within 30 days after the date of filing of the petitions, except that the hearing may not be held before the birth of the child.

(b) Shall appoint counsel or guardians ad litem when required under s. 48.23.

(c) Shall, when the petition has been filed under sub. (1), order the department or a county department under s. 48.57 (1) (c) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested, and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency or, in the case of an Indian child, the tribal child welfare department of the Indian child's tribe has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency or tribal child welfare department in place of the court-ordered report required under this paragraph. In reporting its recommendations under this paragraph with respect to an Indian child, the department, a county department, or a child welfare agency shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the department, county department, or child welfare agency finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(cm) Shall, when the petition has been filed under sub. (1m), request the appropriate agency in the state where the proposed adoptive parent or parents reside to follow the procedures established by the laws of that state to ensure that the proposed adoptive home meets the criteria for a preadoptive placement of the child in the home of a nonrelative.

(d) May, in the case of a child who has not been placed under sub. (1r), order the department or a county department under s. 48.57 (1) (e) or (hm), at the request of a petitioning parent or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), to place the child, pending the hearing on the petition, in any home in this state that is licensed under s. 48.62 or in any home outside this state if the conditions under sub. (1r) are met. In placing an Indian child for adoption under this paragraph, the department or county department shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the department, county department, or child welfare agency finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(dm) May, in the case of a child who has been placed under sub. (1r), order the child to be maintained in the placement pending the hearing on the petition or order the department or a county department under s. 48.57 (1) (c) or, at the request of a petitioning parent or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.

(e) Shall, before hearing the petitions under subs. (2) and (3), ascertain whether the paternity of a nonmarital child who is not adopted, and whose parents do not subsequently intermarry under s. 767.803 has been acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated in this state or another jurisdiction. If the child's paternity has not been acknowledged or adjudicated, the court shall attempt to ascertain the paternity of the child and shall determine the rights of any person who may be the father of the child as provided under s. 48.423. The court may, for good cause, waive the requirement that the child attend either of the hearings.

(5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or over, and each petitioner shall attend the hearing on the petition under sub. (2). The child, if he or she is 12 years of age or over, and each parent having custody of the child shall attend the hearing on the petition under sub. (3). If the parent who has custody of the child consents and the court approves, the proposed adoptive parents may be present at the hearing on the petition under sub. (3). The court may, for good cause, waive the requirement that the child attend either of the hearings.

(6) ORDER OF HEARINGS.

(a) The court shall hold the hearing on the petition under sub. (2) before the hearing on the petition required under sub. (3).

(b) At the beginning of the hearing held under sub. (2), the court shall review the report that is submitted under s. 48.913 (6). The court shall determine whether any payments or the conditions specified in any agreement to make payments are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon the transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petitions under subs. (2) and (3) or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are
impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1).

(b) At the hearing on the petition under sub. (2), the court shall determine whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of sub. (1r) (e). Upon a finding of coercion, the court shall dismiss the petitions under subs. (2) and (3).

(c) After the hearing on the petition under sub. (2), the court shall make findings on the allegations of the petition and the report ordered under sub. (4) (c) and make a conclusion as to whether placement in the home is in the best interest of the child. In determining whether placement of an Indian child in the home is in the best interest of the Indian child, the court shall comply with the procedures specified under this subchapter.

(d) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub. (3). If the parental rights of the parent are terminated, the court shall appoint as guardian of the child the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed to accept guardianship under s. 48.61 (5). If the child has not been placed with the proposed adoptive parent or parents under sub. (1r) or (4) (d), the court shall order the child to be placed with the proposed adoptive parent or parents. If the child has been placed with the proposed adoptive parent or parents under sub. (1r) or (4) (d), the court shall order the child to be maintained in that placement.

(e) S. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(f) The department may charge a fee of not more than $75 to the adoptive parents for reviewing foreign adoption documents and for providing necessary certifications and approvals required by state and federal law.

(g) The department may also charge a fee of not more than $75 to the adoptive parents for reviewing foreign adoption documents and for providing of the department of placement as specified in s. 48.97, for adoptions that occur in a foreign country.

(h) By filing the bond required under par. (a), the child’s guardian and the surety submit to the jurisdiction of the court in the county in which the guardian resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served. Their liability on the bond may be enforced without the commencement of an independent action.

(i) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the guardian and the surety to show cause why judgment on the bond should not be entered for the department. If neither the guardian nor the surety appear for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the guardian and the surety.

(j) If custody of the child is transferred under sub. (4) (b) to a county department or child welfare agency before the child is adopted, the department shall periodically bill the guardian and the surety under s. 49.32 (1) (b) or 49.345 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond against the guardian and surety.

(k) This section does not preclude the department or any other agency given custody of a child under sub. (4) (b) from collecting under s. 49.32 (1) (b) or 49.345 from the former guardian for costs in excess of the amount recovered under the bond incurred in enforcing the bond and providing care and maintenance for the child until he or she reaches age 18 or is adopted.

(l) The department may waive the bond requirement under this subsection.

(2) EVIDENCE OF AVAILABILITY FOR ADOPTION REQUIRED. (a) Any resident of this state who has been appointed by a court of a foreign jurisdiction as guardian of a child who is a citizen of that jurisdiction and who intends to bring the child into this state for the purpose of adopting the child shall file with the department a certified copy of the judgment or order of a court of the foreign jurisdiction or other instrument having the effect under the laws of the foreign jurisdiction of freeing the child for adoption. If the instrument is not a judgment or order of a court, the guardian shall also file with the department a copy of the law under which the instrument was issued, unless the department waives this requirement. The guardian shall also file English translations of the judgment or order or other instrument and of the law. The department shall return the originals to the guardian and keep on file a copy of each document.

(b) If the guardian files a judgment or order of a court under par. (a), the department shall review the judgment or order. If the department determines that the judgment or order has the effect of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the guardian as an adoptive parent, if a licensed child welfare agency has been identified to provide the services required under sub. (5), if the guardian has filed the bond required under sub. (1), and if the guardian has completed the preadoption preparation required under s. 48.84 (1) or the department has determined that the guardian is not required to complete that preparation, the department shall certify to the U.S. immigration and naturalization service that all preadoption requirements of this state that can be met before the child’s arrival in the United States have been met.

(c) If the guardian files an instrument other than a judgment or order of a court under par. (a), the department shall review the instrument. If the department determines that the instrument has the effect under the laws of the foreign jurisdiction of freeing the child for adoption, if the department has been furnished with a copy of a home study recommending the adoptive parents, if a licensed child welfare agency has been identified to provide the services required under sub. (5), if the guardian has filed the bond required under sub. (1), and if the guardian has completed the preadoption requirements.
adoption preparation required under s. 48.84 (1) or the department has determined that the guardian is not required to complete that preparation, the department shall certify to the U.S. immigration and naturalization service that all preadoptive requirements of this state that can be met prior to the child’s arrival in the United States have been met.

(3) PETITION FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS REQUIRED. (a) Within 60 days after the arrival of a child brought into this state from a foreign jurisdiction for the purpose of adoption, the individual who is the child’s guardian shall file a petition to adopt the child, a petition to terminate parental rights to the child, or both. If only a petition to terminate parental rights to the child is filed under this paragraph, the individual guardian shall file a petition for adoption within 60 days of the order terminating parental rights. The individual guardian shall file with the court the documents filed with the department under sub. (2) (a).

(b) Except as provided in par. (a) and sub. (4) (a), the termination of a parent’s parental rights to a child who is a citizen of a foreign jurisdiction is not required prior to the child’s adoption by his or her guardian.

(c) If a petition for adoption is filed under par. (a), the individual guardian filing the petition shall file a copy of the petition with the department at the time the petition is filed with the court. If the individual guardian filed an instrument other than a court order or judgment under sub. (2) (a), the department may make a recommendation to the court as to whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption.

(d) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed an instrument other than a court order or judgment under sub. (2) (a), the court shall determine whether the instrument filed has the effect under the laws of the foreign jurisdiction of freeing the child for adoption. The court shall presume that the instrument has that effect unless there are substantial irregularities or uncertainties on the face, and the department shows good cause for believing that the instrument does not have that effect. If the court determines that the instrument does not have the effect of freeing the child for adoption, the court shall order the petitioner to file a petition to terminate parental rights under s. 48.42 within 10 days.

(e) If a petition for adoption is filed under par. (a) and the individual guardian filing the petition filed a court order or judgment under sub. (2) (a), the court order or judgment shall be legally sufficient evidence that the child is free for adoption.

(4) TRANSFER OF GUARDIANSHIP. FORFEITURE OF BOND. If a guardian does not file a petition as required under sub. (3) (a) or (d), or if the petition for adoption under sub. (3) is withdrawn or denied, the court:

(a) Shall transfer guardianship of the child to the department, to a county department under s. 48.57 (1) (c) or (hm) or to a child welfare agency under s. 48.61 (5) and order the guardian to file a petition for termination of parental rights under s. 48.42 within 10 days.

(b) Shall transfer legal custody of the child to the department, in a county having a population of 500,000 or more, to a county department or to a child welfare agency licensed under s. 48.60.

(c) Shall order the guardian who filed the bond under sub. (1) (a) to show cause why the bond should not be forfeited.

(d) May order that physical custody of the child remain with a suitable individual with whom the child has been living.

(5) CHILD WELFARE SERVICES REQUIRED. Any child welfare agency licensed under s. 48.60 that negotiates or arranges the placement of a child for adoption under this section shall provide service to the child and to the proposed adoptive parents until the child’s adoption is final.


48.84 Preadoption preparation for proposed adoptive parents. (1) Before a child may be placed under s. 48.833 for adoption by a proposed adoptive parent who has not previously adopted a child, before a proposed adoptive parent who has not previously adopted a child may petition for placement of a child for adoption under s. 48.837, and before a proposed adoptive parent who has not previously adopted a child may bring a child into this state for adoption under s. 48.839, the proposed adoptive parent shall complete the preadoption preparation required under this section. The preparation shall be provided by a licensed child welfare agency, a licensed private adoption agency, the state adoption information exchange under s. 48.55, the state adoption center under s. 48.55, a state-funded foster care and adoption resource center, a state-funded postadoption resource center, a technical college district school, or an institution or college campus within the University of Wisconsin System. If the proposed adoptive parent does not reside in this state, he or she may meet this requirement by obtaining equivalent preparation in his or her state of residence.

(2) The department shall promulgate rules establishing the number of hours of preadoption preparation that is required under sub. (1) and the topics covered under that preparation. The preparation shall include training on issues that may confront adoptive parents, in general, and that may confront adoptive parents of special needs children or foreign children.

(3) A proposed adoptive parent who petitions to adopt a child under s. 48.837 or 48.839 or with whom a child is placed under s. 48.833 (2) shall pay the costs of the preadoption preparation required under sub. (1). The department shall pay the costs of the preadoption preparation required under sub. (1) for a proposed adoptive parent with whom a child is placed under s. 48.833 (1).

Cross-reference: See also s. DCF 51.10, Wis. adm. code.

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

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

48.85 Recommendation of guardian. (1) At least 10 days prior to the hearing, the guardian shall file its recommendation with the court. In making a recommendation under this subsection with respect to an Indian child, the guardian shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c).

(2) The guardian’s recommendation shall be presumed to be in the best interests of the child unless the fair preponderance of the credible evidence is to the contrary. If the guardian’s recommendation is in opposition to the granting of the petition, the court shall take testimony as to whether or not the proposed adoption is in the best interests of the child.

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

History: 1973 c. 263; 2009 a. 94.

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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?*
48.88 Notice of hearing; investigation. (1) In this section, unless otherwise qualified, “agency” means any public or private entity except an individual.

(1m) Upon the filing of a petition for adoption, the court shall schedule a hearing within 90 days of the filing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any, to the agency making the investigation under sub. (2), to the department when its recommendation is required by s. 48.89 and to the child if the child is 12 years of age or over.

(2) (a) Except as provided under pars. (ag) and (e), when a petition to adopt a child is filed, the court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner’s home is suitable for the child. The court shall order one of the following to conduct the investigation:

1. If an agency has guardianship of the child, the guardianship agency, unless the agency has already filed its recommendation under s. 48.85 and has filed with the recommendation a report of an investigation as required under this paragraph.

2. If no agency has guardianship of the child and a relative other than a stepparent has filed the petition for adoption, the department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency.

3. If the child is a citizen of a foreign jurisdiction and is under the guardianship of an individual, the agency which conducted the home study required under federal law prior to the child’s entry into the United States.

(ag) If the child is an Indian child, the court may request the tribal child welfare department of the Indian child’s tribe to conduct the investigation. If the tribal child welfare department agrees to conduct the investigation, that investigation may be accepted in lieu of the investigation under par. (a).

(1m) The agency making the investigation shall provide the court with a criminal history search from the records maintained by the department of justice and request under 42 USC 16962 (b) a fingerprint–based check of the national crime information databases, as defined in 28 USC 534 (f) (3) (A), with respect to the petitioner. The agency may release any information obtained under this subdivision only as permitted under 42 USC 16962 (e). In the case of a child on whose behalf adoption assistance payments will be provided under s. 48.975, if the petitioner has been convicted of any of the offenses specified in s. 48.685 (5) (bm) 1. to 4., the agency may not report that the petitioner’s home is suitable for the child.

2. If the petitioner was required to obtain a license to operate a foster home before placement of the child for adoption or relicensure after a break in licensure, the agency making the investigation shall obtain a criminal history search from the records maintained by the department of justice and request under 42 USC 16962 (e). In the case of a child on whose behalf adoption assistance payments will be provided under s. 48.975, if the petitioner has been convicted of any of the offenses specified in s. 48.685 (5) (bm) 1. to 4., the agency may not report that the petitioner’s home is suitable for the child.

3. If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order the department in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 or a licensed child welfare agency, order the department or the child welfare agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner’s background through public records, including records maintained by the department or any county department under s. 48.981. The department, county department or child welfare agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the department in a county having a population of 500,000 or more or a county department or child welfare agency to make the investigation if the department or child welfare agency consents.

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


48.89 Recommendation of the department. (1) The recommendation of the department is required for the adoption of a child if the child is not under the guardianship of a county department under s. 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a recommendation under this subsection with respect to an Indian child, the department shall comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the department finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(2) The department shall make its recommendation to the court at least 10 days before the hearing unless the time is extended by the court. The recommendation shall be part of the record of the proceedings.


48.90 Filing of adoption petition; preadoption residence. (1) A petition for adoption may be filed at any time if:

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

(b) The petitioner is the child’s stepparent.

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

(d) The petitioner is the proposed adoptive parent with whom the child has been placed under s. 48.839.

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(i) Living expenses of the child’s birth mother, in an amount not to exceed $5,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

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

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

(L) Birthing classes.

(1) A gift to the child’s birth mother from the proposed adoptive parents, of no greater than $100 in value.

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

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

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

(c) Maternity clothes for the child’s birth mother, in an amount not to exceed $300.

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

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

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

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

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

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

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


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

48.915 Adoption appeals given preference. An appeal from a judgment granting or denying an adoption shall be given preference.


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

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and the adopted person’s birth parents and the relationship between the adopted person and all persons whose relationship to the adopted person is derived through those birth parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, unless the birth parent is the spouse of the adoptive parent, in which case those relationships shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the birth parent which is the spouse of the adoptive parent and all persons whose relationship to the adopted person is derived through that birth parent. Notwithstanding the extinction of all parental rights under this subsection, a court may order reasonable visitation under s. 48.925.

(3) Rights of inheritance by, from and through an adopted child are governed by ss. 854.20 and 854.21.

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


Adoption proceedings confer all parental rights on the adoptive parents and therefore resolve all issues relating to the biological grandparents’ rights to assert claims for custody and guardianship. Following adoption, a change requires a showing of unfitness in the adoptive parents. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998), 97–3595.

Sub. (2) does not nullify prior support arrearage obligations for which a natural parent became liable before that parent’s parental rights were terminated. Hernandez v. Allen, 2005 WI App 247, 286 Wis. 2d 111, 707 N.W.2d 557, 04–2696.

48.925 **Visitation rights of certain persons.** (1) Upon petition by a relative who has maintained a relationship similar to a parent–child relationship with a child who has been adopted by a stepparent or relative, the court, subject to subs. (1m) and (2), may grant reasonable visitation rights to that person if the petitioner has maintained such a relationship within 2 years prior to the filing of the petition, if the adoptive parent or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive parent and birth parent, have notice of the hearing and if the court determines all of the following:

(a) That visitation is in the best interest of the child.

(b) That the petitioner will not undermine the adoptive parent’s or parents’ relationship with the child or, if a birth parent is the spouse of an adoptive parent, the adoptive parent’s and birth parent’s relationship with the child.

(c) That the petitioner will not act in a manner that is contrary to parenting decisions that are related to the child’s physical, emotional, educational or spiritual welfare and that are made by the adoptive parent or parents or, if a birth parent is the spouse of an adoptive parent, by the adoptive parent and birth parent.

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

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

(1o) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the adoptive parent.

(3) This section applies to every child in this state who has been adopted, by a stepparent or relative, regardless of the date of the adoption.

(4) Any person who interferes with visitation rights granted under sub. (1) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.


48.93 **Records closed.** (1) In this section, “adoptee” has the meaning given in s. 48.432 (1) (a).

(1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) (1r), or (1v), s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of the court for good cause shown.

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48.94 New birth certificate. After entry of the order granting adoption the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption, or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.15 (2) or any other law of this state.

48.95 Withdrawal or denial of petition. Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter and ch. 938. When the case is transferred, the court may order the records transferred to the department and placed in its closed files.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and birth parent are to adoptive parent.

48.97 Adoption orders of other jurisdictions. When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the department has approved the placement. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter.


48.975 Adoption assistance. 

(1) Definition. In this section, “adoption assistance” means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents.

(2) Applicability. The department may provide adoption assistance only for a child with special needs and only when the department has determined that such assistance is necessary to assure the child’s adoption.

(3) Types. The department may provide adoption assistance for maintenance, medical care or nonrecurring adoption expenses, or for any combination of those types of adoption assistance, according to the following criteria:

(a) Maintenance. 1. Except as provided in subd. 3., for support of a child who was in foster care or subsidized guardianship care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child’s foster care or subsidized guardianship care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

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

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

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

(b) Medical. The adoption assistance for medical care shall be sufficient to pay expenses due to a physical, mental or emotional condition of the child which is not covered by a health insurance policy insuring the child or the parent.

(c) Nonrecurring adoption expenses. Subject to any maximum amount provided by the department by rule promulgated under sub. (5), the adoption assistance for nonrecurring adoption expenses shall be sufficient to pay the reasonable and necessary adoption fees, court costs, legal fees and other expenses that are directly related to the adoption of the child that are not incurred in violation of any state or federal law.

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

(4) Procedure. (a) Except in extenuating circumstances, as defined by the department by rule promulgated under sub. (5) (a), a written agreement to provide adoption assistance shall be made prior to adoption. An agreement to provide adoption assistance may be made only for a child who, at the time of placement for adoption, is in the guardianship of the department or other agency
authorized to place children for adoption, in the guardianship of an American Indian tribal agency in this state, or in a subsidized guardianship under s. 48.623.

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

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

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

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

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

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

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

(4m) RECOVERY OF INCORRECT PAYMENTS. The department may recover an overpayment of adoption assistance from an adoptive parent who continues to receive adoption assistance for maintenance by reducing the amount of the adoptive parent’s monthly payment of adoption assistance for maintenance. The department may by rule specify other methods for recovering overpayments of adoption assistance.

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

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

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

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

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

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

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

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

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


Cross-reference: See also ch. DCF 50, Wis. adm. code.

48.977 Appointment of guardians for certain children in need of protection or services. (2) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of the person for a child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (4m), (5), (8), (9), (10), (10m), (11), or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged and placement of the child in the home of a guardian under this section has been recommended under s. 48.33 (1) or 938.33 (1).

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended under par. (a) and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of 18 years.
(c) That, if appointed, it is likely that the person would be willing and able to serve as the child’s guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child’s parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

(f) That the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child’s health and safety are the paramount concerns, but that reunification of the child with the child’s parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child’s health and safety, but that continued placement of the child in the home would be contrary to the welfare of the child, except that the court is not required to find that the agency has made those reasonable efforts with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the guardianship order. A guardianship order that merely references this paragraph without documenting or referencing that specific information in the order or an amended guardianship order that retroactively corrects an earlier guardianship order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(3) DESIGNATION AS A PERMANENT PLACEMENT. If a court appoints a guardian for a child under sub. (2), the court may designate the child’s placement with that guardian as the child’s permanent foster placement, but only for purposes of s. 48.368 (2) or 938.368 (2).

(3r) SUBSIDIZED GUARDIANSHIP. Subsidized guardianship payments under s. 48.623 (1) may not be made to a guardian of a child unless a subsidized guardianship agreement under s. 48.623 (2) is entered into before the guardianship order is granted and the court either terminates any order specified in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated in need of protection or services as specified in sub. (2) (a). If a child’s permanency plan calls for placement of the child in the home of a guardian and the provision of monthly subsidized guardianship payments to the guardian, the petitioner under sub. (4) (a) shall include in the petition under sub. (4) (b) a statement of the determinations made under s. 48.623 (1) and a request for the court to include in the court’s findings under sub. (4) (d) a finding confirming those determinations. If the court confirms those determinations, appoints a guardian for the child under sub. (2), and either terminates any order specified in sub. (2) (a) or dismisses any proceeding in which the child is adjudicated to be in need of protection or services as specified in sub. (2) (a), the county department or, in a county having a population of 750,000 or more, department shall provide monthly subsidized guardianship payments to the guardian under s. 48.623 (1).

(4) PROCEDURE AND DISPOSITION. (a) Who may file petition. Any of the following persons may file a petition for the appointment of a guardian for a child under sub. (2):

1. The child or the child’s guardian, legal custodian, or Indian custodian.

2. The child’s guardian ad litem.

3. The child’s parent.

4. The person with whom the child is placed or in whose home placement of the child is recommended as described in sub. (2) (a), if the person is nominated as the guardian of the child in the petition.

5. The department.

6. A county department under s. 46.22 or 46.23 or, if the child has been placed pursuant to an order under ch. 938 or the child’s placement with the guardian is recommended under ch. 938, a county department under s. 46.215, 46.22, or 46.23.

7. A licensed child welfare agency that has been assigned primary responsibility for providing services to the child under a court order.

8. The person representing the interests of the public under s. 48.09.

(b) Contents of petition. A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall be entitled “In the interest of .... (child’s name), a person under the age of 18” and shall set forth all of the following with specificity:

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

2. The names and addresses of the child’s parent or parents, guardian and legal custodian.

3. The date on which the child was adjudged in need of protection or services under s. 48.13 (1) (a), (b), (c), (d), (15) or (16), 938.345, 938.357, 938.363, 938.365, 938.375, 938.379 or, if the child has been so adjudged, but not so placed, 938.365 or, if the child has been so adjudged, but not so placed, the date of the report under s. 48.33 (1) (a) or 938.33 (1) in which placement of the child in the home of the person is recommended.

4. A statement of the facts and circumstances which the petition alleges establish that the conditions specified in sub. (2) (b) to (f) are met.

5. A statement of whether the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act under ch. 822.

6. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to that act, the names and addresses of the child’s Indian custodian, if any, and Indian tribe, if known.

(c) Service of petition and notice. 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (cm) to be served upon all of the following persons:

a. The child if the child is 12 years of age or older.

b. The child’s guardian and legal custodian.

c. The child’s guardian ad litem.

d. The child’s counsel.

e. The child’s parent.

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

g. The person with whom the child is placed or in whose home placement of the child is recommended as described in sub. (2) (a), if the person is nominated as the guardian of the child in the petition.

h. The person representing the interests of the public under s. 48.09.

i. The agency primarily responsible for providing services to the child under a court order.

j. If the child is an Indian child, the Indian child’s Indian custodian, if any, and tribe, if known.

2. Except as provided in subd. 2m, service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if, with reasonable diligence a party specified in subd. 1, cannot be served by mail or personal service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known.
or the residence of the relatives of the party, if known, or the last−known location of the party.

2m. If the petitioner knows or has reason to know that the child is an Indian child, service under subd. 2. to the Indian child’s parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under par. (cm) until at least 10 days after receipt of service by the Indian child’s parent, Indian custodian, and tribe or, if the identity or location of the Indian child’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of service by the U.S. secretary of the interior. On request of the Indian child’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) Plea hearing. 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date which allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition. Before accepting a plea of no contest to the allegations in the petition, the court shall do all of the following:

a. Address the parties present and determine that the plea is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential disposition and the nature of the legal consequences of that disposition.

b. Establish whether any promises or threats were made to elicit the plea of no contest and alert all unrepresented parties to the possibility that an attorney may discover grounds to contest the petition that would not be apparent to those parties.

c. Make inquiries to establish the satisfaction of the court that there is a factual basis for the plea of no contest.

2. If the petition is not contested and if the court accepts the plea of no contest, the court may immediately proceed to a dispositional hearing under par. (fm), unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

3. If the petition is contested or if the court does not accept the plea of no contest, the court shall set a date for a fact−finding hearing under par. (d) which allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(d) Fact−finding hearing. The court shall hold a fact−finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) have been met. If the court, at the conclusion of the fact−finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact−finding hearing.

(e) Court report. For a child who has been placed, or continued in a placement, outside of his or her home for 6 months or longer, the court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court a report containing the written summary under s. 48.38 (5) (e) and as much information relating to the appointment of a guardian as is reasonably ascertainable. For a child who has been placed, or continued in a placement, outside of his or her home for less than 6 months, the court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court the report submitted under s. 48.33 (1) or 938.33 (1), the permanency plan prepared under s. 48.38 or 938.36, if one has been prepared, and as much information relating to the appointment of a guardian as is reasonably ascertainable. The agency shall file the report at least 48 hours before the date of the dispositional hearing under par. (fm).

(fm) Dispositional hearing. The court shall hold a dispositional hearing on the petition at the time specified or set by the court under par. (cm) 2. or (d), at which any party may present evidence, including expert testimony, relevant to the disposition.

(g) Dispositional factors. In determining the appropriate disposition under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider any report submitted under par. (e) and shall consider, but not be limited to, all of the following:

1. Whether the person would be a suitable guardian of the child.

2. The willingness and ability of the person to serve as the child’s guardian for an extended period of time or until the child attains the age of 18 years.

3. The wishes of the child.

4. If the child is an Indian child, the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order. A strong attachment of the child to the person or a strong commitment of the person to caring permanently for the child does not, in itself, constitute good cause for departing from that order.

(h) Disposition. After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the person as the child’s guardian is not in the best interests of the child.

2. A disposition ordering that the person with whom the child has been placed or in whose home placement of the child is recommended as described in sub. (2) (a) be appointed as the child’s guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

(i) Effect of disposition on permanency plan review process. After a disposition under par. (b), the child’s permanency plan shall continue to be reviewed under s. 48.38 (5), if applicable.

(5) DUTIES AND AUTHORITY OF GUARDIAN. (a) Full guardianship. Unless limited under par. (b), a guardian appointed under sub. (2) shall have all of the duties and authority specified in s. 48.023.

(b) Limited guardianship. The court may order that the duties and authority of a guardian appointed under sub. (2) be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (b) 2. or any revised order under sub. (6). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian appointed under sub. (2) to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

(6) REVISION OF GUARDIANSHIP ORDER. (a) Any person authorized to file a petition under sub. (4) (a) may request a revision in a guardianship order entered under this subsection or sub. (4) (b) 2., or the court may, on its own motion, propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the court’s disposition.

(b) The court shall hold a hearing on the matter prior to any revision of the guardianship order if the request or court proposal indicates that new information is available which affects the
advisability of the court’s guardianship order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a revision if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the court determines that a revision would be in the best interests of the child.

(7) **Termination of Guardianship.** (a) **Term of guardianship.** Unless the court order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years or until terminated by the court, whichever occurs earlier.

(b) **Removal for cause.** 1. Any person authorized to file a petition under sub. (4) (a) may request that a guardian appointed under sub. (2) be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian’s trust and may allege facts relating to any other information that affects the advisability of the court’s disposition.

2. The court shall hold a hearing on the matter unless written waivers of objections to the removal are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or court proposal shall be attached to the notice. The court shall remove the guardian for cause if, at the hearing, the court finds that it has been proved by clear and convincing evidence that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian’s trust and may allege facts relating to any other information that affects the advisability of the court’s disposition.

(c) **Resignation.** A guardian appointed under sub. (2) may resign at any time if the resignation is accepted by the court.

(d) **Termination on request of parent.** 1. A parent of the child may request that a guardianship order entered under sub. (4) (h) 2. or a revised order entered under sub. (6) be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child.

2. The court shall hold a hearing on the matter unless written waivers of objections to the termination are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request shall be attached to the notice. The court shall terminate the guardianship if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the parent is willing and able to carry out the duties of a guardian and if the court determines that termination of the guardianship would be in the best interests of the child.

(e) **Termination on termination of parental rights.** If a court enters an order under s. 48.427 (3p) or 48.428 (2) (b), the court shall terminate the guardianship under this section.

(b) Nothing in this section prohibits an individual from petitioning a court under ch. 54 for appointment of a guardian.


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

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

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

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

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

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

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

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

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

2. The names and addresses of the child’s parent or parents, guardian and legal custodian.

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

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

5. A statement of whether the duty and authority of the standby guardian are to become effective on the petitioner’s incapacity, on the petitioner’s death, or on the petitioner’s debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first.
6. A statement that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement.

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

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

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

10. A statement of whether the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act under ch. 822.

11. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known.

(c) Service of petition and notice. 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (d) to be served on all of the following persons:
   a. The child if the child is 12 years of age or older.
   b. The child's guardian and legal custodian.
   c. The child's guardian ad litem.
   d. The child's counsel.
   e. The child's other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located.
   f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.
   g. The person who is nominated as the standby guardian of the child in the petition and, if an alternate standby guardian is nominated in the petition, the person who is nominated as the alternate standby guardian.

2. Service shall be made by certified mail at least 7 days before the hearing or by personal service in the same manner as a summons is served under s. 801.11 (1) (a) or (b) at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or by personal or substituted service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party.

(d) Plea hearing. 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date that allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition.
   2. If the petition is not contested, the court may immediately proceed to a dispositional hearing under par. (g), unless an adjournment is requested under par. (g).
   3. If the petition is contested, the court shall set a date for a fact-finding hearing under par. (e) that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(e) Fact-finding hearing. The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (d) 3. at which any party may present evidence relevant to any of the following issues:
   1. Whether there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.
   2. Whether the child has any parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.
   3. If a parent cannot be located, whether the petitioner has made diligent efforts to locate that parent.
   4. If a parent has refused to join in the petition, whether that refusal is unreasonable.

(f) Required findings by court. If the court, at the conclusion of the fact-finding hearing, makes all of the following findings by clear and convincing evidence, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested under par. (g):
   1. That there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.
   2. That the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.
   3. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent.
   4. That, if a parent has refused to join in the petition, the refusal was unreasonable.
   5. That the person nominated as standby guardian is willing and able to act as standby guardian or, if that person is not so willing and able, that the person nominated as alternate standby guardian is willing and able to act as standby guardian.

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

(h) Dispositional factors. In determining the appropriate disposition under this par. (j), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:
   1. Whether the person nominated as standby guardian or alternate standby guardian would be a suitable guardian of the child.
   2. The willingness and ability of the person nominated as standby guardian or alternate standby guardian to serve as the child's guardian if the petitioner becomes incapacitated or debilitated or dies.
   3. The wishes of the child.

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

(j) Disposition. After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:
   1. A disposition dismissing the petition if the court determines that appointment of the person nominated as standby guardian or alternate standby guardian as the child's standby guardian is not in the best interests of the child.
   2. A disposition ordering that the person nominated as standby guardian or alternate standby guardian be appointed as
the child’s standby guardian if the court determines that such an appointment is in the best interests of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DESIGNATION OF STANDBY GUARDIAN

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

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

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

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

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

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

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

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

Signature....

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

Witness No. 1:
(print) Name .... Date ....
Address ....
Signature ....

Witness No. 2:
(print) Name .... Date ....
Address ....
Signature ....

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

Standby guardian’s signature .... Date ....
Address ....

Alternate standby guardian’s signature .... Date ....

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

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

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

Signature .... Date ....

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

Witness No. 1:
(print) Name .... Date ....
Address ....
Signature ....

Witness No. 2:
(print) Name .... Date ....
Address ....
Signature ....

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

2. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

3. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The wishes of the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Parental Rights; Duty and Authority of Standby Guardian. (a) Parental Rights. The beginning of the duty and authority of a standby guardian under sub. (2) or (3) does not, in itself, divest a parent of any parental rights.

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

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

(7) Relationship to Ch. 54. (a) Except when a different right, remedy or procedure is provided under this section, the rights, remedies, and procedures provided in ch. 54 shall govern a standby guardianship created under this section.

(b) This section does not abridge the duties or authority of a guardian appointed under ch. 880, 2003 stats., or ch. 54.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian under ch. 54.


48.979 Delegation of power by parent. (1) (a) A parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to an agent, for a period not to exceed one year, any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or induction of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. A delegation of powers under this paragraph does not deprive the parent of any of his or her powers regarding the care and custody of the child.

(b) If a delegation of powers to an agent under par. (a) is facilitated by an entity, as defined in s. 48.685 (1) (b), that entity shall obtain the information specified in s. 48.685 (2) (b) 1. with respect to the proposed agent and any nonclient resident, as defined in s. 48.685 (1) (bm), of the proposed agent. Subject to s. 48.685 (5), if that information indicates that the proposed agent may not be a contractor, as defined in s. 48.685 (1) (ar), of the entity or that a nonresident of the proposed agent may not be permitted to reside with the proposed agent for a reason specified in s. 48.685 (4m) (b) 1. to 5., the entity may not facilitate a delegation of powers to the proposed agent under par. (a). The entity shall provide the department of health services with information about each person who is denied a delegation of powers or permission to reside under this paragraph for a reason specified in s. 48.685 (4m) (b) 1. to 5. (bm) A parent may not delegate under par. (a) his or her powers regarding the care and custody of a child who is subject to the jurisdiction of the court under s. 48.13, 48.14, 938.12, 938.13, or 938.14 unless the court approves the delegation.

(c) A parent who has legal custody of a child may not place the child in a foster home, group home, or inpatient treatment facility by means of a delegation of powers under par. (a). Those placements may be made only by means of a court order or as provided in s. 48.63 or 51.13.

(d) A delegation of powers under par. (a) does not prevent or supersede any of the following:

1. An agency, a sheriff, or a police department from receiving and investigating a report of suspected or threatened abuse or neglect of the child under s. 48.981.

2. The child from being taken into and held in custody under s. 48.19 to 48.21 or 938.19 to 938.21.

3. An intake worker from conducting an intake inquiry under s. 48.24 or 938.24.

4. A court from exercising jurisdiction over the child under s. 48.13 or 938.13.
(dm) A delegation of powers under par. (a) regarding the care and custody of an Indian child is subject to the requirements of s. 48.028 (5) (a).

e) A parent who has delegated his or her powers regarding the care and custody of a child under par. (a) may revoke that delegation at any time by executing a written revocation and notifying the agent in writing of the revocation. A written revocation invalidates the delegation of powers except with respect to acts already taken in reliance on the delegation of powers.

(2) A power of attorney complies with sub. (1) (a) if the power of attorney substantially conforms to the following form:

**POWER OF ATTORNEY**

**DELEGATING PARENTAL POWER**

AUTHORIZED by s. 48.979, Wis. Stats.

NAME(S) OF CHILD(REN)

This power of attorney is for the purpose of providing for the care and custody of:

Name, address, and date of birth of child ....

Name, address, and date of birth of child ....

Name, address, and date of birth of child ....

DELEGATION OF POWER TO AGENT

I, .... (name and address of parent), state that I have legal custody of the child(ren) named above. (Only a parent who has legal custody may use this form.) A parent may not use this form to delegate parental powers regarding a child who is subject to the jurisdiction of the juvenile court under s. 48.13, 48.14, 938.12, 938.13, or 938.14, Wis. Stats.

I delegate my parental power to:

Name of agent ....

Agent’s address ....

Agent’s telephone number(s) ....

Agent’s e-mail address ....

Relationship of agent to child(ren) ....

The parental power I am delegating is as follows:

FULL

(Chcek if you want to delegate full parental power regarding the care and custody of the child(ren) named above.)

.... Full parental power regarding the care and custody of the child(ren) named above

PARTIAL

(Chcek each subject over which you want to delegate your parental power regarding the child(ren) named above.)

.... The power to consent to all health care; or

.... The power to consent to only the following health care:

.... Ordinary or routine health care, excluding major surgical procedures, extraordinary procedures, and experimental treatment

.... Emergency blood transfusion

.... Dental care

.... Disclosure of health information about the child(ren)

.... The power to consent to educational and vocational services

.... The power to consent to the employment of the child(ren)

.... The power to consent to the disclosure of confidential information, other than health information, about the child(ren)

.... The power to provide for the care and custody of the child(ren)

.... The power to consent to the child(ren) obtaining a motor vehicle operator’s license

.... The power to travel with the child(ren) outside the state of Wisconsin

.... The power to obtain substitute care, such as child care, for the child(ren)

.... Other specifically delegated powers or limits on delegated powers (Fill in the following space or attach a separate sheet describing any other specific powers that you wish to delegate or any limits that you wish to place on the powers you are delegating.) ....

This delegation of parental powers does not deprive a custodial or noncustodial parent of any of his or her powers regarding the care and custody of the child, whether granted by court order or force of law.

THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME, GROUP HOME, OR INPATIENT TREATMENT FACILITY.

EFFECTIVE DATE AND TERM OF THIS DELEGATION

This Power of Attorney takes effect on .... and will remain in effect until .... If no termination date is given or if the termination date given is more than one year after the effective date of this Power of Attorney, this Power of Attorney will remain in effect for a period of one year after the effective date, but no longer. This Power of Attorney may be revoked in writing at any time by a parent who has legal custody of the child(ren) and such a revocation invalidates the delegation of parental powers made by this Power of Attorney, except with respect to acts already taken in reliance on this Power of Attorney.

SIGNATURE(S) OF PARENT(S)

Signature of parent .... Date ....

Parent’s name printed ....

Parent’s address ....

Parent’s telephone number ....

Parent’s e-mail address ....

Signature of parent .... Date ....

Parent’s name printed ....

Parent’s address ....

Parent’s telephone number ....

Parent’s e-mail address ....

WITNESSING OF SIGNATURE(S) (OPTIONAL)

STATEMENT OF AGENT

I, .... (name and address of agent), understand that .... (name(s) of parent(s)) has (have) delegated to me the powers specified in this Power of Attorney regarding the care and custody of .... (name(s) of child(ren)). If further understand that this Power of Attorney may be revoked in writing at any time by a parent who has legal custody of .... (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney, understand the powers delegated to me by this Power of Attorney, am fit, willing, and able to undertake those powers, and accept those powers.

Agent’s signature .... Date ....

APPENDIX

(Here the parent(s) may indicate where they may be located during the term of the Power of Attorney if different from the address(es) set forth above.)

.... I can be located at:

Address(es) ....

Telephone number(s) ....

E-mail address(es) ....

... Or, by contacting:

Name ....
48.979 CHILDREN'S CODE

Address ....
Telephone number ....
E-mail address ....
For, I cannot be located

(3) (a) In this subsection:
1. “Agent” means a person to whom delegation of the care and custody of a child under this section is facilitated by an organization.
2. “Organization” means an organization that facilitates delegations of the care and custody of children under this section.

(b) The department may promulgate rules to implement this section. If the department promulgates those rules, those rules shall include rules establishing all of the following:

1. Training requirements for the staff of an organization, including training in identifying children who have been abused or neglected and the laws and procedures under s. 48.981 governing the reporting of suspected or threatened child abuse or neglect.
2. Screening and assessment requirements for a proposed agent, including a screening of the personal characteristics, health, and finances of the proposed agent and of the physical environment and safety of the proposed agent’s home and, based on that screening, an assessment of the proposed agent’s fitness to provide for the care and custody of the child and ability to meet the child’s needs. The rules promulgated under this subdivision shall prohibit an organization from facilitating a delegation of the care and custody of a child to a proposed agent unless the proposed agent is fit to provide for the care and custody of the child and able to meet the child’s needs.
3. Training requirements for an agent, including the training described in subd. 1. and training in the expectations of an agent specified in subd. 4.

4. The expectations of an agent with respect to the care and custody of the child, including expectations relating to the care, nurturing, protection, training, guidance, and discipline of the child; the provision of food, shelter, education, and health care for the child; cooperation with the child’s parents in coparenting the child; and cooperation with the organization in facilitating visitation and other communications with the child’s parents and in otherwise complying with the expectations of the organization.
5. A requirement that an organization regularly monitor an agent and the child whose care and custody is delegated to the agent and maintain communications with the child’s parents.

History: 2011 a. 87; correction in (2) (form) under 35.17.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children. (1) No person may bring a child into this state or send a child out of this state for the purpose of placing the child in foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2) (a) Any person, except a county department or licensed child welfare agency, who brings a child into this state for the purpose of placing the child in a foster home shall, before the child’s arrival in this state, file with the department a $1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 49.32 (1) (b) or 49.345 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4) (a) This section applies only to interstate placements of children that are not governed by s. 48.980 or 48.99.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may promulgate all rules necessary for the enforcement of this section.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81; 1985 a. 176; 1985 a. 332 s. 251 (5); 1993 a. 446; 2007 a. 20; 2009 a. 28, 339.

48.981 Abused or neglected children and abused unborn children. (1) DEFINITIONS. In this section:

(a) “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.

(b) “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 residential care center for children and youth or a Type 2 juvenile 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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
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 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 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.

(c) “Indian unborn child” means an unborn child who, when born, may be eligible for affiliation with an Indian tribe in any of the following ways:
1. As a member of the Indian tribe.
2. As a person who is eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(cv) “Member of a religious order” means an individual who has taken vows devoting himself or herself to religious or spiritual principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) “Member of the clergy” has the meaning given in s. 765.002 (1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(f) “Record” means any document relating to the investigation, assessment and disposition of a report under this section.

(g) “Reporter” means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) “Subject” means a person or unborn child named in a report or record as any of the following:
1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.
2. A person who has been determined to have abused or neglected a child or to have abused an unborn child.


(2) PERSONS REQUIRED TO REPORT. (a) 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 subs. (2m) and (2r), report as provided in sub. (3):
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).
15. A school administrator.
16m. A school employee not otherwise specified in this paragraph.
17. A mediator under s. 767.405.
18. A child care worker in a child care center, group home, or residential care center for children and youth.
19. A child 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.
23. An occupational therapist.
25. A speech-language pathologist.
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 subs. (2m) and (2r), report as provided in sub. (3).

(bm) 1. Except as provided in subd. 3. and subs. (2m) and (2r), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:
   a. Has been abused, as defined in s. 48.02 (1) (b) to (f);
   b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f),
   c. A school employee not otherwise specified in this paragraph.
   d. A health care provider, as defined in s. 49.141 (1) (d).
   e. A school counselor.
   f. A school administrator.
   g. A first responder.
   h. A police or law enforcement officer.

1m. An unborn child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. A school employee not otherwise specified in this paragraph.

1m. A school counselor.

1m. A school administrator.

1m. A school employee not otherwise specified in this paragraph.
CHILDREN'S CODE

(2m) EXCEPTION TO REPORTING REQUIREMENT; HEALTH CARE SERVICES. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. “Health care provider” means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. “Health care service” means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.
2. 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.

(2r) EXCEPTION TO REPORTING REQUIREMENT; PERSON DELEGATED PARENTAL POWERS. A person delegated care and custody of a child under s. 48.979 is not required to report as provided in sub. (3) any suspected or threatened abuse or neglect of the child as required under sub. (2) (a), (b), or (bm) or (2m) (d) or (e). Such a person who has reason to suspect that the child has been abused or neglected or who has reason to believe that the 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).

(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, 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 planning and execution of the investigation of the report.
2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 6. 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.

(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 6. to take a child into custody, the investigating officer may request assistance from the sheriff or police department.

(c) Notice of report to Indian tribal agent. In a county that has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunks tribe, if a county department that receives a report under par. (a) pertaining to a child or unborn child knows or has reason to know 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 depart-
Duties of county departments. 1. a. Immediately after receiving a report under par. (a), the agency shall evaluate the report to determine whether there is reason to suspect that a caregiver has abused or neglected the child, has threatened the child with abuse or neglect, or has facilitated or failed to take action to prevent the suspected or threatened abuse or neglect of the child. Except as provided in sub. (3m), if the agency determines that a caregiver is suspected of abuse or neglect or of threatened abuse or neglect of the child, determines that a caregiver is suspected of facilitating or failing to take action to prevent the suspected or threatened abuse or neglect of the child, or cannot determine who abused or neglected the child, within 24 hours after receiving the report 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 is in need of protection or services. If the agency determines that a person who is not a caregiver is suspected of abuse or neglect or of attempted abuse of the child, in accordance with that authority, initiate a diligent investigation to determine if the child is in need of protection or services. Within 24 hours after receiving a report under par. (a) of suspected unborn child abuse, the agency, in accordance with that authority, shall initiate a diligent investigation to determine if the unborn child is in need of protection or services. An investigation under this subd. 1. a. shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations.

b. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caretaker specified in sub. (1) (am) 1. to 4. or of a report that does not disclose who is suspected of 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 caretaker 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 investigating 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 permitting the person 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 unborn 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 be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.13 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 that the county department, department, or licensed child welfare agency investigates under subd. 1., whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child’s parent, guardian, or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child’s health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents,
guardian or legal custodian of the child or to any expectant mother of an unborn child. The 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.

5. 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 provide the subunit of the department that administers s. 48.685 with information about the person who has been determined to have abused or neglected the child.

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 of the key information confidential under subd. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

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

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. The department shall use the information to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use nonidentifying 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., 2m., 5., 5r., 6., 6m., and 8. and 1. The department may contract with a licensed child welfare agency to fulfill the county department’s duties specified under par. (c) 1., 2., 2m., 3., 4., 5., 5m., 5r., 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 a 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 unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county 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).

(3m) ALTERNATIVE RESPONSE PILOT PROGRAM. (a) In this subsection, “substantial abuse or neglect” means abuse or neglect or threatened abuse or neglect that under the guidelines developed by the department under par. (b) constitutes severe abuse or neglect or a threat of severe abuse or neglect and a significant threat to the safety of a child and his or her family.

(b) The department shall establish a pilot program under which an agency in a county having a population of 500,000 or more or a county department that is selected to participate in the pilot program may employ alternative responses to a report of abuse or
The investigation, the agency or county department may terminate the investigation and conduct an assessment under subd. 2. If the agency or county department shall document the reasons for terminating the investigation and notify any law enforcement agency under sub. (3) (a) 3., or determine by a preponderance of the evidence under sub. (3) (c) 4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child.

(d) The department shall conduct an evaluation of the pilot program and, by July 1, 2012, shall submit a report of that evaluation to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3). The evaluation shall assess the issues encountered in implementing the pilot program and the overall operations of the pilot program, include specific measurements of the effectiveness of the pilot program, and make recommendations to improve that effectiveness. Those specific measurements shall include all of the following:

1. The turnover rate of the agency or county department case-workers providing services under the pilot program.
2. The number of families referred for each type of response specified in par. (c) 1. to 3.
3. The number of families that declined to accept, and the number of families that declined to accept, services offered under par. (c) 2. and 3.
4. The effectiveness of the evaluation under par. (c) (intro.) in determining the appropriate response under par. (c) 1. to 3.
5. The impact of the pilot program on the number of out-of-home placements of children by the agencies or county departments participating in the pilot program.
6. The availability of services to address the issues of child and family safety, risk of subsequent abuse or neglect, and family strengths and needs in the communities served under the pilot project.

7g. The rate at which children referred for each type of response specified in par. (c) 1. to 3. are subsequently the subjects of reports of suspected or threatened abuse or neglect.

7m. The satisfaction of families referred for each type of response specified in par. (c) 1. to 3. with the process used to respond to those referrals.
7r. The cost effectiveness of responding to reports of suspected or threatened abuse or neglect in the manner provided under the pilot program.

(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.

3. If the agency or county department determines that there is no reason to suspect that abuse or neglect has occurred or is likely to occur, the agency or county department shall refer the child’s family to a service provider in the community for the provision of appropriate services on a voluntary basis. If the agency or county department employs the community services response under this subdivision, the agency or county department is not required to conduct an assessment under subd. 2., refer the report to the sheriff or police department under sub. (3) (a) 3., or determine by a preponderance of the evidence under sub. (3) (c) 4. that abuse or neglect has occurred or is likely to occur or that a specific person has abused or neglected the child.

- **Notices:** 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.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?*
(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.

3. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.


4m. 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.

4p. A public or private agency in this state or any other state that is investigating a person for purposes of diagnosis and treatment.

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 an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5p. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county or a court in which the child is the subject of the report or record or abuse of the unborn child who is the subject of the report or record.

6. A professional employee of a 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.

7. 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, 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 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 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 services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

8s. Authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the reports or records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subdivision. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subdivision for any purpose consistent with any proceeding under ch. 980.

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 ch. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI 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.

10m. A tribal court, or other adjudicative body authorized by an Indian tribe 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 an Indian tribe 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 in proceedings under subd. 10m. or 10r., of an Indian child in pro-
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2. Notwithstanding par. (a), if an agency that receives a report under sub. (3) has reason to suspect that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, within 2 working days after determining that such an incident is suspected to have occurred the agency shall provide all of the following information to the subunit of the department responsible for statewide oversight of child abuse and neglect programs:

1. The name of the agency and the name of a contact person at the agency.
2. Information about the child, including the age of the child.
3. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child.
4. A brief history of any reports under sub. (3) received in which the child, a member of the child’s family, or the person suspected of the abuse or neglect was the subject of any services under this chapter offered or provided to any of those persons.
5. A statement of whether the child was residing in his or her home or was placed outside the home when the incident occurred.
6. The identity of any law enforcement agency that referred the report of the incident and of any law enforcement agency, district attorney, or other officer or agency to which the report of the incident was referred.
7. A. Within 2 working days after receiving the information provided under subd. 2, the subunit of the department that received the information shall disclose to the public the fact that the subunit has received the information; whether the department is conducting a review of the incident and, if so, the scope of the review and the identities of any other agencies with which the department is cooperating at that point in conducting the review; whether the child was residing in the home or was placed in an out-of-home placement at the time of the incident; and information about the child, including the age of the child. If the information received is about an incident of egregious abuse or neglect, the subunit of the department shall make the same disclosure to a citizen review panel, as described in par. (a) 15j., and, in a county having a population of 500,000 or more, to the Milwaukee child welfare partnership council.
8. Within 90 days after receiving the information provided under subd. 2, the subunit of the department that received the information shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a summary report that contains the information specified in subd. 4. or 5., whichever is applicable. That subunit may also include in the summary report a summary of any actions taken by the agency in response to the incident and of any changes in policies or practices that have been made to address any issues raised in the review and recommendations for any further changes in policies, practices, rules, or statutes that may be needed to address those issues. If the subunit does not include those actions or changes and recommended changes in the summary report, the subunit shall prepare, transmit to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3), and make available to the public a report of those actions or changes and recommended changes within 6 months after receiving the information provided under subd. 2. Those committees shall review all summary reports and reports of changes and recommended changes transmitted under this subd.
9. b., conduct public hearings on those reports no less often than annually, and submit recommendations to the department regarding those reports.
10. Subdivision 3. a. and b. does not preclude the subunit of the department that prepares the summary report from releasing to the governor, to the appropriate standing committees of the legislature under s. 13.172 (3), or to the public any of the information specified in subd. 4. or 5. before the summary report is transmitted to the governor and to those committees and made available to the public; adding to or amending a summary report if new informa-
4. If the child was residing in his or her home when the incident of death or serious injury or the incident of egregious abuse or neglect occurred, the summary report under subd. 3. shall contain all of the following:
   a. Information about the child, including the age, gender, and race or ethnicity of the child, a description of the child’s family, and, if relevant to the incident, a description of any special needs of the child.
   b. A statement of whether any services under this chapter or ch. 938 were being provided to the child, any member of the child’s family, or the person suspected of the abuse or neglect, or whether any of those persons was the subject of a report being investigated under sub. (3) or of a referral to the agency for services, at the time of the incident and, if so, the date of the last contact between the agency providing those services and the person receiving those services.
   c. A summary of all involvement of the child’s parents and of the person suspected of the abuse or neglect in any incident reported under sub. (3) or in receiving services under this chapter or ch. 938 in the 5 years preceding the date of the incident.
   d. A summary of any actions taken by the agency with respect to the child, any member of the child’s family, and the person suspected of the abuse or neglect, including any investigation by the agency under sub. (3) of a report in which any of those persons was the subject and any referrals by the agency of any of those persons for services.
   e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.
   f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.
   g. A summary of any investigation that has been conducted under sub. (3) of a report in which the child, any member of the child’s family, or the person suspected of the abuse or neglect was the subject and of any services that have been provided to the child and the child’s family since the date of the incident.
   h. The child was placed in an out−of−home placement under this chapter or ch. 938 at the time of the incident of death or serious injury or incident of egregious abuse or neglect, the summary report under subd. 3. shall contain all of the following:
      a. Information about the child, including the age, gender, and race or ethnicity of the child and, if relevant to the incident, a description of any special needs of the child.
      b. A description of the out−of−home placement, including the basis for the decision to place the child in that placement.
      c. A description of all other persons residing in the out−of−home placement.
      d. The licensing history of the out−of−home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed, and a summary of all violations by the licensee of any provisions of licensure under s. 48.70 (1) or rules promulgated by the department under s. 48.67 and of any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety, and welfare of a child.
      e. The date of the incident and the suspected cause of the death, serious injury, or egregious abuse or neglect of the child, as reported by the agency under subd. 2. c.
      f. The findings on which the agency bases its reasonable suspicion that an incident of death or serious injury or an incident of egregious abuse or neglect has occurred, including any material circumstances leading to the death, serious injury, or egregious abuse or neglect of the child.

6. A summary report or other release or disclosure of information under subd. 3. may not include any of the following:
   a. Any information that would reveal the identity of the child who is the subject of the summary report, any member of the child’s family, any member of the child’s household who is a child, or any caregiver of the child.
   b. Any information that would reveal the identity of the person suspected of the abuse or neglect or any employee of any agency that provided services under this chapter to the child or that participated in the investigation of the incident of death or serious injury or the incident of egregious abuse or neglect.
   c. Any information that would reveal the identity of a reporter or of any other person who provides information relating to the incident of death or serious injury or the incident of egregious abuse or neglect.
   d. Any information the disclosure of which would not be in the best interests of the child who is the subject of the summary report, any member of the child’s family, any member of the child’s household who is a child, or any caregiver of the child, as determined by the subunit of the department that received the information, after consultation with the agency that reported the incident of death or serious injury or the incident of egregious abuse or neglect, the district attorney of the county in which the incident occurred, or the court of that county, and after balancing the interest of the child, family or household member, or caregiver in avoiding stigma that might result from disclosure against the interest of the public in obtaining that information.
   e. Any information the disclosure of which is not authorized by state law or rule or federal law or regulation.
   f. Any ongoing or future criminal investigation or prosecution or a defendant’s right to a fair trial.
   g. Any ongoing or future civil investigation or proceeding or the fairness of such a proceeding.
   h. Any information that would prevent the disclosure of information required to disclose under this paragraph, any person may request the department to disclose that information. If the person’s request is denied, the person may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the department, 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. 6. or 7. apply.
   i. Any person acting in good faith in providing information under subd. 2., in preparing, transmitting, or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. is immune from any liability, civil or criminal, that may result by reason of those actions. For purposes of any proceeding, civil or criminal, the good faith of a person in providing information under subd. 2.,
in preparing, transmitting, or making available a summary report under subd. 3., or in otherwise transmitting, releasing, or disclosing information under subd. 3. shall be presumed.

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

(dm) Notwithstanding par. (a), an agency may enter the content of any report or record maintained by the agency into the statewide automated child welfare information system established under s. 48.47 (7g).

(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 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. 49.165 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department.

In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department.

The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 49.165 (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).

**Cross-reference:** See also ch. DCF 43, Wis. adm. code.

(9) **ANNUAL AND QUARTERLY REPORTS.** (a) **Annual reports.** Annually, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports.

(b) **Quarterly reports.** 1. Within 30 days after the end of each calendar quarter, the department shall prepare and transmit to the governor, and to the appropriate standing committees of the legislature under s. 13.173 (3), a summary report of all reports received by the department under sub. (3) (c) 8. during the previous calendar quarter of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed in the home of a foster parent or relative other than a parent or in a group home, shelter care facility, or residential care center for children and youth. For each report included in the summary report the department shall provide the number of incidents of abuse reported; the dates of those incidents; the county in which those incidents occurred; the age or age group of the child who is the subject of the report; the type of placement in which the child was placed at the time of the incident; whether it was determined under sub. (3) (c) 4. that abuse occurred; and, if so, the nature of the relationship between the child and the person who abused the child, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b.

2. In every 4th summary report prepared and transmitted under subd. 1., the department shall provide for all reports of abuse, as defined in s. 48.02 (1) (b) to (f), of a child who is placed as described in subd. 1. received by the department under sub. (3) (c) 8. during the previous year information indicating whether the abuse resulted in any injury, disease, or pregnancy that is known to be directly caused by the abuse, but may not provide any of the information specified in sub. (7) (cr) 6. or any information that would jeopardize an investigation, prosecution, or proceeding described in sub. (7) (cr) 7. a. or b. A county department reporting under sub. (3) (c) 8. shall make an active effort to obtain that information and report the information to the department under sub. (3) (c) 8.

3. The appropriate standing committees of the legislature shall review all summary reports transmitted under subd. 1., conduct public hearings on those summary reports no less often than annually, and submit recommendations to the department regarding those summary reports. The department shall also make those summary reports available to the public.

(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.


Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supersede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Rogers, 115 Wis. 2d 443, 340 N.W.2d 216 (1983).

Section 48.981, 1983 stats., is not constitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

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Immuny 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 requirements 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). Philp, 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." Houbi, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998), 96−2964.

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, 253 Wis. 2d 527, 646 N.W.2d 330, 00−1570.

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. Polasek, 2002 WI 74, 253 Wis. 2d 527, 646 N.W.2d 330, 00−1570.

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 Att'y Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Att'y Gen.

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 context, or exigent circumstances. Section 51.30 does not bar such reports made in good faith. 76 Att'y Gen. 39.

A county department may not contract with other agencies to obtain s. 48.981 reporting on investigative services in situations other than the performance of independent investigations required by sub. (3) (d). A cooperative contract might be possible under ch. 66 in order to effectuate this purpose but the services must be furnished by the county department as defined in s. 48.02 (2g) and not by any other public or private agency. 76 Att'y Gen. 286.

Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Att'y 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 public school, local school, and exclude school personnel from the interview. School personnel cannot condition on−site interviews on notification of the child's parents. 79 Att'y Gen. 49.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Att'y 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 in sub. (7) (a) 10. 81 Att'y 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 no do so is necessary to an investigation of alleged child maltreatment. OAG 3−98.

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

To the extent sub. (3) (c) 1. authorizes government officials to interview children suspected of being abused on private property and without a warrant, probable cause, consent, context, or exigent circumstances, it is unconstitutional as applied. However, it can be constitutionally applied, such as when government officials interview a child on public school property when they have definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused or her parents have been in imminent danger of parental abuse. Doe v. Heck, 327 F.3d 492 (2003). See also Michael v. Gnesbach, 526 F.3d 1008 (2008).


48.982 Child abuse and neglect prevention board.

(1) DEFINITIONS. In this section:

(b) “Board” means the child abuse and neglect prevention board.

(bm) “Cultural competency” means the ability of an individual or organization to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures, including parents and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(d) “Organization” means a nonprofit organization, as defined under s. 108.02 (19), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services or parent education.

(2) POWERS AND DUTIES. The board shall:

(a) Biennially, develop and transmit to the governor and the presiding officer of each house of the legislature a plan for awarding grants and providing technical assistance to organizations and for providing child abuse and neglect prevention information and services on a statewide basis. The plan shall assure that there is an equal opportunity for the establishment of child abuse and neglect prevention programs and family resource centers. The plan shall also ensure that the grants will be distributed throughout all geographic areas of the state and in both urban and rural communities. For grants provided under sub. (6), the plan shall also ensure that the grants are distributed based on population.

(b) Develop and publicize criteria for grant applications.

(c) Review and approve or disapprove grant applications and monitor the services provided under each grant awarded under subs. (4) and (6).

(d) Solicit and accept contributions, grants, gifts, and bequests for the children’s trust fund or for any other purpose for which a contribution, grant, gift, or bequest is made and received. Moneys received under this paragraph may be credited to the appropriation accounts under s. 20.433 (1) (i) or (q).

(e) Include as part of its annual report under s. 15.07 (6) the names and locations of organizations receiving grants, the amounts provided as grants, the services provided by grantees and the number of persons served by each grantee.

(f) Establish a procedure for an annual evaluation of its functions, responsibilities and performance. In a year in which the biennial plan under par. (a) is prepared, the evaluation shall be coordinated with the plan.

(g) In coordination with the department and the department of public instruction:

1. Recommend to the governor, the legislature, and state agencies changes needed in state programs, statutes, budgets, and rules to reduce the problems of child abuse and neglect, improve coordination among state agencies that provide prevention services, promote individual, family, and community strengths, build parenting skills, and provide community support for children and families.

2. Promote state, local, educational and public awareness campaigns and materials for the purpose of developing public awareness of the problems of child abuse and neglect.

3. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect.

4. Disseminate information about the problems of and methods of preventing child abuse and neglect to the public and to organizations concerned with those problems.

5. Encourage the development of community child abuse and neglect prevention programs.

(gm) Provide, for use by the board in its statewide projects under sub. (5) and for use by organizations that receive grants under subs. (4) and (6), educational and public awareness materials and programming that emphasize the role of fathers in the primary prevention of child abuse and neglect.

(2e) NONSTOCK, NONPROFIT CORPORATION. (a) The board may organize and maintain a nonstock, nonprofit corporation under ch. 181 for the exclusive purposes, subject to the approval of the board under par. (b) 1., of soliciting and accepting contributions, grants, gifts, and bequests for deposit into the children’s trust fund or into the fund maintained by the corporation under subd. 2. and of administering any statewide project under sub. (5) or any other program, including the grant programs under subs. (4) and (6), that the board contracts with the corporation to administer.

2. The corporation shall establish and maintain a fund into which the corporation shall deposit all contributions, grants, gifts, and bequests accepted by the corporation under subd. 1. that are not deposited into the children’s trust fund, all moneys received under s. 341.14 (6r) (b) 6. and all moneys transferred from the children’s trust fund under 2005 Wisconsin Act 319 section 64 (1).

3. In accordance with the wishes of the donor, any contributions, gifts, or bequests accepted by the corporation that are deposited in the children’s trust fund shall be used for any of the

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on This Website Official?
purposes specified in sub. (2m) or shall continue to accumulate in the children’s trust fund pursuant to s. 25.67 (2).

4. In accordance with the wishes of the donor and subject to the approval of the board under par. (b) 1., any contributions, grants, gifts, or bequests accepted by the corporation that are deposited into the fund under subd. 2., shall be used to encourage donors to make contributions, grants, gifts, and bequests to the corporation for deposit into the children’s trust fund or into the fund under subd. 2., to fund statewide projects under sub. (5) or any other program, including any of the grant programs under subs. (4) and (6), that the board contracts with the corporation to administer, or to pay for the actual and necessary operating costs of the corporation or shall continue to accumulate indefinitely.

5. All moneys received under s. 341.14 (6r) (b) 6. and all moneys transferred from the children’s trust fund under 2005 Wisconsin Act 319 section 64 (1), that are deposited into the fund under subd. 2. shall continue to accumulate indefinitely in the fund.

(b) 1. Annually, the corporation organized and maintained under par. (a) 1. shall submit to the board for the approval of the board a budget specifying how the corporation intends to allocate the contributions, grants, gifts, and bequests accepted by the corporation and all other moneys of the corporation. The budget shall specify the amount of contributions, grants, gifts, and bequests that will be deposited into the children’s trust fund and the amount of contributions, grants, gifts, and bequests that will be deposited into the fund maintained by the corporation under par. (a) 2. Of the amounts deposited into the fund under par. (a) 2., the budget shall specify the amounts that will be allocated for each of the purposes specified in par. (a) 4. or that will be permitted to accumulate indefinitely. On approval of the board, the board shall enter into a contract with the corporation specifying the allocations approved by the board.

2. The contract may also provide for the use by the board of the services of the corporation and for the provision by the board of administrative services to the corporation. The type and scope of any administrative services provided by the board to the corporation and the board employees assigned to perform the services shall be determined by the board. The corporation may also employ staff to perform administrative services for the corporation. The corporation may not engage in political activities.

(c) The corporation under par. (a) 1. shall donate any real property to the state within 5 years after acquiring the property unless holding the property for more than 5 years is consistent with sound business and financial practices and is approved by the joint committee on finance.

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

(e) The board of directors of any corporation established under this subsection shall consist of 9 members, including the chairperson of the board and 4 members of the board, elected by the board.

(f) Any corporation established under this subsection shall be organized so that contributions to it will be deductible from adjusted gross income under section 170 of the Internal Revenue Code, as defined under s. 71.01 (6), and so that the corporation will be exempt from taxation under section 501 of the Internal Revenue Code, as defined under s. 71.22 (4), and under s. 71.26 (1) (a) (a) (2m).

(2m) Donation uses. If money is accepted by the board for the children’s trust fund or for any other purpose under sub. (2) (d) or (2e) (a) 3. and appropriated under s. 20.433 (1) (g), the board shall use the money in accordance with the wishes of the donor to do any of the following:

(a) Award grants and provide technical assistance to organizations under subs. (4) and (6) and provide child abuse and neglect prevention information and services on a statewide basis.

(b) Pay for actual and necessary operating costs under sub. (3).

(c) Fund statewide projects under sub. (5).

(d) Fund shaken baby syndrome and impacted babies prevention activities under s. 253.15.

3. STAFF AND SALARIES. The board shall determine the qualifications of and appoint, in the classified service, an executive director and staff. The salaries of the executive director and staff and all actual and necessary operating expenses of the board shall be paid from the appropriations under s. 20.433 (1) (g), (i), (k), (m), and (q).

4. AWARD OF GRANTS; PROVISION OF STATEWIDE INFORMATION AND SERVICES. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (m), and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a).

From the appropriations under s. 20.433 (1) (b), (g), (h), (i), (k), (m), and (q), the board, in accordance with that plan, shall provide technical assistance to organizations and shall provide child abuse and neglect prevention information and services on a statewide basis.

(b) A grant may be awarded only to an organization that agrees to match the grant, through money or in-kind services, as follows:

1. During the first year for which an organization receives a grant, at least 25% of the amount received for that year.

2. During the 2nd and subsequent years for which an organization receives a grant, at least 50% of the amount received for each year.

(c) Each grant application shall comply with sub. (7) (d) and shall include proof of the organization’s ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs for the primary prevention of child abuse and neglect, including all of the following:

1. Programs to promote public awareness of the need for the prevention of child abuse and neglect.

2. Community-based family resource and support programs that provide services or education to families, including services or education relating to support of parents, perinatal bonding, child development, care of children with special needs, respite care, and prevention of sexual abuse.

3. Community-based programs relating to crisis care, early identification of children at risk of child abuse or neglect, and education, training and support groups for parents, children and families.

(e) In determining which organizations shall receive grants, the board shall consider whether the applicant’s proposal will further the coordination of comprehensive child abuse and neglect prevention services between the organization and other resources, public and private, in the community and the state.

5. STATEWIDE PROJECTS. From the appropriations under s. 20.433 (1) (g), (i), and (q), the board shall administer any statewide project for which it has accepted money under sub. (2m) (c).

6. AWARD OF FAMILY RESOURCE CENTER GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (m), and (q), the board shall award grants to organizations in accordance with the request--for--proposal procedures developed under sub. (2) (a).

From the appropriations under s. 20.433 (1) (b), (g), (h), (i), (k), (m), (n), and (q), the board shall provide technical assistance to organizations in accordance with those procedures. No organization may receive a grant or grants under this subsection totaling more than $150,000 in any year.

(am) Notwithstanding the geographical and urban and rural distribution requirements under sub. (2) (a), the board shall allocate not more than $150,000 from the appropriation under s. 20.433 (1) (h) in each fiscal year for the awarding of grants, in accordance with the request--for--proposal procedures developed.
under sub. (2) (a), to organizations located in counties with a population of 500,000 or more.

(b) A grant may be awarded only to an organization that agrees to make at least a 20% match to the grant, through either money or in-kind services.

(c) Each grant application shall comply with sub. (7) (d) and shall include proof of the organization’s ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for direct parent, family, support, and referral to other social services programs and outreach programs, including programs that provide education to parents in their homes. For organizations applying for grants for the first time on or after July 1, 1998, the board shall give favorable consideration in awarding grants to organizations for programs in communities where home visitation programs that provide in-home visitation services to parents with newborn infants are in existence or are in development and, if grants are awarded, shall require programs supported by grants to maximize coordination with these home visitation programs. Programs supported by the grants shall track individual participants to ensure that they receive necessary services and shall emphasize direct services to families with children who are 3 years of age or less.

(e) Grants awarded under this subsection may not supplant any other funding for parenting education.

(7) GRANT APPLICATIONS; ADDITIONAL REQUIREMENTS; EVALUATION. (d) Each application for a grant under sub. (4) or (6) shall include proof that the organization has the cultural competency to provide services under the grant to persons and families in the various cultures in the organization’s target population and that cultural competency is incorporated in the organization’s policies, administration, and practices. Each grant application shall also include proof of the organization’s ability to do all of the following:

1. Maximize the coordination of new and existing family support, educational, and health services and minimize the duplication of those services by coordinating and collaborating with other organizations in the establishment and operation of the organization’s child abuse and neglect prevention program or family resource center.

2. Provide programs that identify and build on a family’s strengths to encourage the development of a healthy family.

3. Provide culturally competent services.

4. Provide or coordinate the provision of community-based outreach, educational, and family support services through the organization’s child abuse and neglect prevention program or family resource center.

(h) The board shall conduct an evaluation of the effectiveness of the programs under subs. (4) and (6) in achieving their stated goals and, by June 30 of each odd-numbered year, shall submit a report on that evaluation to the appropriate standing committees under s. 13.172 (3).


48.983 Child abuse and neglect prevention program.

(1) DEFINITIONS. In this section:

(b) “Case”, other than when used in the term “case management services”, means a family or person who meets all of the following criteria:

1. The family or person is any of the following:

   a. A family or person who has been the subject of a report under s. 48.981 and with respect to whom the individual making the investigation or the intake worker assigned to the family or person has determined that all of the conditions in subd. 2. exist.

   b. An Indian child who has been the subject of a report under s. 48.981 about which an Indian tribe that has received a grant under this section has received notice, including but not limited to notice provided to a tribal agent under s. 48.981 (3) (bm), and with respect to whom an individual designated by the Indian tribe has determined that all of the conditions in subd. 2. exist.

   c. A family that includes a person who has contacted a county department, a private agency, or Indian tribe that has been awarded a grant under this section or, in a county having a population of 500,000 or more that has been awarded a grant under this section, the department, a private agency, or a licensed child welfare agency under contract with the department requesting assistance to prevent poor birth outcomes or abuse or neglect of a child in the person’s family and with respect to which an individual responding to the request has determined that all of the conditions in subd. 2. exist.

2. The family or person has been determined to meet all of the following conditions:

   a. There is a substantial risk of poor birth outcomes or future abuse or neglect of a child in the family if assistance is not provided.

   b. The child and the child’s parent or the person primarily responsible for the child’s care are willing to cooperate with an informal plan of support and services.

   c. It does not appear that a petition will be filed under s. 48.25 alleging that a child in the family is in need of protection or services under s. 48.13 and, if an Indian child is involved, it also does not appear that there will be a similar proceeding in tribal court relating to abuse or neglect of the Indian child.

   (cm) “Culturally competent” means the ability to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures.

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

   (gm) “Private agency” means an organization operated for profit or a nonstock corporation organized under ch. 181 that is a nonprofit corporation, as defined in s. 181.0103 (17).

   (h) “Reservation” means land in this state within the boundaries of a federally recognized reservation of an Indian tribe or within the bureau of Indian affairs service area for the Ho-Chunk Nation.

(2) FUNDS PROVIDED. (a) If a county, private agency, or Indian tribe applies and is selected by the department under sub. (5) to participate in the program under this section, the department shall award, from the appropriation under s. 20.437 (1) (ab), an amount annually to be used only for the purposes specified in sub. (4) (a) and (am).

   (b) The department shall determine the amount of a grant awarded to a county, private agency, or Indian tribe under this section in excess of the minimum amount based on the need of the county, private agency, or Indian tribe for a grant, as determined by a formula that the department shall promulgate by rule. That formula shall determine that need based on the number of births that are funded by Medical Assistance under subch. IV of ch. 49 in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe and on the rate of poor birth outcomes, including infant mortality, premature births, low birth weights, and racial or ethnic disproportionality in the rates of those outcomes, in that county, the area in which that private agency is providing services, or the reservation of that Indian tribe.

   (c) The department shall allocate 10 percent of the funds available from the appropriation account under s. 20.437 (1) (ab) in

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each fiscal year for grants under this section to counties, private agencies, or Indian tribes that have not previously received those grants.

Cross-reference: See also ch. DCF 35, Wis. adm. code.

(3) Joint application permitted. Any combination of 2 or more counties, private agencies, or Indian tribes may submit a joint application to the department.

(4) Purpose. (a) Grants; flexible funds, training and case management. The grants awarded under this section shall be used for all of the following purposes:

1. To establish or maintain the fund under sub. (6) (b) 1.
2. To establish or maintain the fund under sub. (6) (b) 2.
3. To pay expenses incurred in connection with attending training activities related to the program under this section. No more than $1,500 of the grant amount may be used for this purpose in the 12 months following receipt of a grant.

(b) Home visitation program services. 1. A county, private agency, or Indian tribe that is selected to participate in the program under this section shall offer all pregnant women in the county, the area in which that private agency is providing services, or the reservation of the tribe who are eligible for Medical Assistance under subch. IV of ch. 49 an opportunity to undergo an assessment through use of a risk assessment instrument to determine whether the person assessed presents risk factors for poor birth outcomes or for perpetrating child abuse or neglect. Persons who agree to be assessed shall be assessed during the prenatal period. The risk assessment instrument shall be developed by the department and shall be based on risk assessment instruments developed by the department for similar programs that are in operation. The department need not promulgate as rules under ch. 227 the risk assessment instrument developed under this subdivision. A person who is assessed to be at risk of poor birth outcomes or of perpetrating child abuse or neglect and that are acceptable to the department, and incorporates practice standards and critical elements that have been developed for successful home visitation programs by entities concerned with the prevention of poor birth outcomes and child abuse and neglect and that are acceptable to the department, and incorporates practice standards and critical elements that have been developed for successful home visitation programs by a nationally recognized home visitation program model and that are acceptable to the department.

2. To reimburse a case management provider under s. 49.45 (25) (b) for the amount of the allowable charges under the Medical Assistance program that is not provided by the federal government for case management services provided to a Medical Assistance beneficiary described in s. 49.45 (25) (am) 9. who is a child and who is a member of a family that receives home visitation program services under par. (b) 1.

(4m) Grants; start-up costs and capacity building. In the first year in which a grant under this section is awarded to a county, private agency, or Indian tribe, the county, private agency, or Indian tribe may use a portion of the grant to pay for start-up costs and capacity building related to the program under this section. The department shall determine the maximum amount of a grant that a county, private agency, or Indian tribe may use to pay for those start-up costs and that capacity building.

(b) Home visitation program services. 1. A county, private agency, or Indian tribe that is selected to participate in the program under this section shall offer all pregnant women in the county, the area in which that private agency is providing services, or the reservation of the tribe who are eligible for Medical Assistance under subch. IV of ch. 49 an opportunity to undergo an assessment through use of a risk assessment instrument to determine whether the person assessed presents risk factors for poor birth outcomes or for perpetrating child abuse or neglect. Persons who agree to be assessed shall be assessed during the prenatal period. The risk assessment instrument shall be developed by the department and shall be based on risk assessment instruments developed by the department for similar programs that are in operation. The department need not promulgate as rules under ch. 227 the risk assessment instrument developed under this subdivision. A person who is assessed to be at risk of poor birth outcomes or of perpetrating child abuse or neglect and that are acceptable to the department, and incorporates practice standards and critical elements that have been developed for successful home visitation programs by a nationally recognized home visitation program model and that are acceptable to the department.

2. To reimburse a case management provider under s. 49.45 (25) (b) for the amount of the allowable charges under the Medical Assistance program that is not provided by the federal government for case management services provided to a Medical Assistance beneficiary described in s. 49.45 (25) (am) 9. who is a child and who is a member of a family that receives home visitation program services under par. (b) 1.

(6) Criteria for awarding grants. In addition to any other criteria developed by the department, a county, private agency, or Indian tribe shall meet all of the following criteria in order to be selected for participation in the program under this section:

(a) The part of an application, other than a renewal application, submitted by a county, private agency, or Indian tribe that relates to home visitation programs shall include all of the following:

1. Information on how the applicant’s home visitation program is comprehensive, incorporates practice standards that have been developed for home visitation programs by entities concerned with the prevention of poor birth outcomes and child abuse and neglect and that are acceptable to the department, and incorporates practice standards and critical elements that have been developed for successful home visitation programs by a nationally recognized home visitation program model and that are acceptable to the department.

2. Documentation that the application was developed through collaboration among public and private organizations that provide services to children and families, especially children who are at risk of child abuse or neglect and families that are at risk of poor birth outcomes, or that are otherwise interested in child welfare and a description of how that collaboration effort will support a comprehensive home visitation program.

3. An identification of existing poor birth outcome and child abuse and neglect prevention services that are available to residents of the county, the area in which the private agency is providing services, or the reservation of the Indian tribe and a description of how those services and any additional needed services will support a comprehensive home visitation program.

4. An explanation of how the home visitation program will build on existing poor birth outcome and child abuse and neglect prevention programs, including programs that provide support to families, and how the home visitation program will coordinate with those programs.
4m. An explanation of how the applicant will encourage private organizations to provide services under the applicant’s home visitation program.

5. An explanation of how the applicant, in collaboration with local prenatal care coordination providers, will implement strategies aimed at achieving healthy birth outcomes, as determined by performance measures prescribed by the department of health services, in the county or reservation of the Indian tribe.

6. An identification of how the home visitation program is comprehensive and incorporates the practice standards and critical elements for successful home visitation programs referred to in subd. 1., including how services will vary in intensity levels depending on the needs and strengths of the participating family.

7m. An explanation of how the services to be provided under the home visitation program, including the risk assessment under sub. (4) (b) 1., will be provided in a culturally competent manner.

7. A statement of whether the applicant intends to use a portion of the grant in the first year in which the grant is awarded to pay for start-up costs or capacity building related to the program under this section and an explanation of how the applicant would use any amounts authorized by the department under sub. (4) (am) for those purposes.

(b) Flexible funds. 1. ‘Flexible fund for home visitation programs.’ The applicant demonstrates in the application that the applicant has established, or has plans to establish, if selected, a fund from which payments totaling not less than $250 per calendar year may be made for appropriate expenses of each family that is participating in the home visitation program under sub. (4) (b) 1. or that is receiving home visitation services under s. 49.45 (44).

The payments shall be authorized by an individual designated by the applicant. If an applicant makes a payment to or on behalf of a family under this subdivision, one-half of the payment shall be from grant moneys received under this section and one-half of the payment shall be from moneys provided by the applicant from sources other than grant moneys received under this section.

2. ‘Flexible fund for cases.’ The applicant demonstrates in the grant application that the applicant has established, or has plans to establish, if selected, a fund from which payments totaling not less than $250 for each case may be made for appropriate expenses related to the case. The payments shall be authorized by an individual designated by the applicant. If an applicant makes a payment to or on behalf of a person under this subdivision, one-half of the payment shall be from grant moneys received under this section and one-half of the payment shall be from moneys provided by the applicant from sources other than grant moneys received under this section.

(c) Case management benefit. The applicant states in the grant application that it has established, or has plans to establish, if selected, procedures to encourage, when appropriate, a person to whom or on whose behalf payments are made under this subdivision to make a contribution to the fund described in this subdivision up to the amount of payments made to or on behalf of the person when the person’s financial situation permits such a contribution.

4. ‘Nonenrollment.’ No individual is entitled to any payment from a fund established under subd. 1. or 2. Nothing in this section shall be construed as requiring a county, private agency, or Indian tribe to make a determination described in sub. (1) (b) 2. A determination described in sub. (1) (b) 2. may not be construed to be a determination described in s. 48.981 (3) (c) 4.

(c) Case management benefit. The applicant states in the grant application that it has elected, or, if selected, that it will elect, under s. 49.45 (25) (am) 9. who are children and who are members of families receiving home visitation program services under sub. (4) (b) 1.

(d) Wraparound process. 1. The applicant demonstrates in the grant application that the payments that will be made from the fund established under par. (b) 2. will promote the provision of services for the case by using a wraparound process so as to provide those services in a flexible, comprehensive and individualized manner in order to reduce the necessity for court-ordered services.

2. The applicant indicates in the grant application whether the applicant is willing to use a portion of any moneys distributed to the applicant under s. 48.965 (2) (a) to provide case management services to a Medical Assistance beneficiary under s. 49.45 (25) (am) 9. who is a case or who is a member of a family that is a case.

If the applicant is so willing, the applicant shall explain how the applicant plans to use that portion of those moneys to promote the provision of those services for the case by using a wraparound process so as to provide those services in a flexible, comprehensive and individualized manner in order to reduce the necessity for court-ordered services.

(e) Anticipated allocation. The applicant explains in the grant application how the applicant anticipates allocating moneys awarded under the grant among the purposes described in sub. (4) (a) 1., 2. and 4m. and, in an application other than a renewal application, the purposes described in sub. (4) (a) 1., 2. and 4m. and (am).

(f) Reinvestment of Medical Assistance reimbursement. The applicant agrees to reinvest in the program under this section a portion of the reimbursement received by the applicant under the Medical Assistance program under subch. IV of ch. 49. The department and the applicant shall negotiate the amount of that reinvestment based on the applicant’s administrative costs for billing the Medical Assistance program for reimbursement for services provided under this section and the ratio of Medical Assistance reimbursement received for those services to the amount billed to the Medical Assistance program for those services.

(g) Private agency applicant. If the applicant is a private agency, the applicant submits documentation with the grant application that demonstrates that the application is supported by a county and that a county will collaborate with the private agency in providing services.

6m. MATERNITY.

(a) Except as permitted or required under s. 48.981 (2), no person may use or disclose any information concerning any individual who is selected for an assessment under sub. (4) (b), including an individual who declines to undergo the assessment, or concerning any individual who is offered services under a home visitation program funded under this section, including an individual who declines to receive those services, unless the use or disclosure is connected with the administration of the home visitation program or the administration of the Medical Assistance program under ss. 49.43 to 49.497 or unless the individual has given his or her written informed consent to the use or disclosure.

(b) A county, private agency, or Indian tribe that is selected to participate in the program under this section shall provide or shall designate an individual or entity to provide an explanation of the confidentiality requirements under par. (a) to each individual who is offered an assessment under sub. (4) (b) or who is offered services under the home visitation program of the county, private agency, or Indian tribe.

6m. NOTIFICATION OF PARENT PRIOR TO MAKING ABUSE OR NEGLECT REPORT. If a person who is providing services under a home visitation program under sub. (4) (b) 1. determines that he or she is required or permitted to make a report under s. 48.981 (2) about a child in a family to which the person is providing those services, the person shall, prior to making the report under s. 48.981 (2), make a reasonable effort to notify the child’s parent that a report under s. 48.981 (2) will be made and to encourage the parent to contact a county department to request assistance. The notification requirements under this subsection do not affect the reporting requirements under s. 48.981 (2).

6n. HOME VISITATION PROGRAM INFORMATIONAL MATERIALS. Any informational materials about a home visitation program under sub. (4) (b) 1. that are distributed to a person who is offered...
or who is receiving home visitation program services under that program shall state the sources of funding for the program.

(7) Home visitation program evaluation. (a) The department shall conduct or shall select an evaluator to conduct an evaluation of the home visitation program. The evaluation shall measure all of the following criteria in families that have participated in the home visitation program and that are selected for evaluation:
   1. The number of poor birth outcomes and substantiated reports of child abuse and neglect.
   2. The number of emergency room visits for injuries to children.
   3. The number of out-of-home placements of children.
   4. Immunization rates of children.
   5. The number of services provided under s. 49.46 (2) (a) 2. to children.
   6. Any other items that the department determines to be appropriate for evaluation.

   (ag) The department shall evaluate the availability of home visitation programs in the state and determine whether there are gaps in home visitation services in the state. The department shall cooperate with counties, private agencies, and Indian tribes providing home visitation programs to address any gaps in services identified.

   (ar) Each county, private agency, and Indian tribe providing a home visitation program shall collect and report data to the department, as required by the department. The department shall require each county, private agency, and Indian tribe providing a home visitation program to collect data using forms prescribed by the department.

   (b) In the evaluation, the department shall determine the number of families who remained in the home visitation program for the time recommended in the family’s case plan.

   (c) Each county, private agency, and Indian tribe providing a home visitation program shall develop a plan for evaluating the effectiveness of its program for approval by the department. The plan shall demonstrate how the county, private agency, or Indian tribe will use the evaluation of its program to improve the quality and outcomes of the program and to ensure continued compliance with the home visitation program criteria under sub. (6) (a). The plan shall demonstrate how the outcomes will be tracked and measured. Under the plan, the extent to which all of the following outcomes are achieved shall be tracked and measured:

   1. Parents receiving home visitation services acquiring knowledge of early learning and child development and interacting with their children in ways that enhance the children’s development and early learning.
   2. Children receiving home visitation services being healthy.
   3. Children receiving home visitation services living in a safe environment.
   4. Families receiving home visitation services accessing formal and informal support networks.
   5. Children receiving home visitation services achieving milestones in development and early learning.
   6. Children receiving home visitation services who have developmental delays receiving appropriate intervention services.

(8) Technical assistance and training. The department shall provide technical assistance and training to counties, private agencies, and Indian tribes that are selected to participate in the program under this section. The training may not be limited to a particular home visitation model. The training shall include training in best practices regarding basic skills, uniform administration of screening and assessment tools, the issues and challenges that families face, and supervision and personnel skills for program managers. The training may also include training on data collection and reporting.

   History: 1997 a. 293; 2005 a. 25, 165; 2007 a. 20 ss. 1133, 1134, 1136 to 1141, 1143 to 1167; Stats. 2007 s. 48.983; 2009 a. 28, 82, 94, 185; 2011 a. 32.

48.985 Expenditure of federal child welfare funds. (1) Federal program operations. From the appropriation under s. 20.437 (1) (n), the department shall expend not more than $273,700 in each fiscal year of the moneys received under 42 USC 620 to 626 for the department’s expenses in connection with administering the expenditure of funds received under 42 USC 620 to 626 and for child abuse and neglect and unborn child abuse independent investigations.

   (2) Community social and mental hygiene services. From the appropriation under s. 20.437 (1) (o), the department shall distribute not more than $3,554,300 in each fiscal year of the moneys received under 42 USC 620 to 626 to county departments for the provision or purchase of child welfare projects and services, for services to children and families, for services to the expectant mothers of unborn children, and for family-based child welfare services.

   (3) Community youth and family aids. From the appropriation account under s. 20.410 (3) (ko), the department of corrections shall allocate, to county departments under ss. 46.215, 46.22 and 46.23 for the provision of services under s. 301.26, not more than $1,100,000 in each fiscal year.

   (4) Runaway services. From the appropriation under s. 20.437 (1) (na) for runaway services, not more than $458,600 in each fiscal year.


48.986 Child abuse and neglect and unborn child abuse services. (1) From the amounts distributed under s. 48.563 (1) for services for children and families, the department shall distribute funds to eligible counties for services related to child abuse and neglect and to unborn child abuse, including child abuse and neglect and unborn child abuse prevention, investigation, and treatment.

   (3) The department shall distribute the funds under sub. (1) to counties that have a serious problem with child abuse and neglect or with unborn child abuse according to eligibility criteria and distribution criteria to be developed by the department.

   (4) A county may use the funds distributed under this section to fund additional foster parents and subsidized guardians or interim caretakers to care for abused and neglected children and to fund additional staff positions to provide services related to child abuse and neglect and to unborn child abuse.

   (5) A county may not use the funds distributed under this section to reduce its expenditures from other sources for services related to child abuse and neglect or to unborn child abuse below the level in the year before the year for which the funds are distributed.


48.987 Earnings of self-supporting minors. During any time when a parent of a minor neglects or refuses to provide for the minor’s support, or support and education, the earnings of the minor shall be the minor’s sole property as against such parent or any creditor of such parent.

   History: 1977 c. 354 s. 96; Stats. 1977 s. 48.987; 1991 a. 316.

48.988 Interstate compact on the placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

   (1) Article I – Purpose and Policy. It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:
(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

2. Article II - Definitions. As used in this compact:

(a) “Child” means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) “Placement” means the arrangement for the care of a child in a family free or boarding home, in a child-caring agency, or in legally subject to parental, guardianship or similar control.

(c) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or any hospital or other medical facility.

(d) “Sending agency” means a party state, private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(e) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(f) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(g) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(h) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(i) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(j) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(k) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(l) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(m) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(n) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(o) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(p) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(q) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(r) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(s) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(t) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(u) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(v) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(w) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(x) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(y) “Sending agency” means a party state, officer or employee thereof; a subdivision of a party state, or of officer or agency in a receiving state, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(z) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities, or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.
(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

(9) ARTICLE IX – ENACTMENT AND WITHDRAWAL. This compact shall be open to joiner by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

(10) ARTICLE X – CONSTRUCTION AND SEVERABILITY. The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with sub. (5) in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of s. 49.90, ch. 769, or any other applicable state law fixing responsibility for the support of children also may be invoked.

(14) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under sub. (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(15) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by sub. (5) (b).

(16) Any court having jurisdiction to place delinquent children may place such a child in an institution in another state under s. 48.988 (3) or who is placed in an institution in another state under s. 48.988 (6), or to a child from another state who is sent, brought, or caused to be sent or brought into this state under s. 48.988 (3) or who is placed in an institution in another state under s. 48.988 (6), if all of the following have occurred:

(1) The Interstate Compact for the Placement of Children under s. 48.99 is in effect as provided in s. 48.99 (14) (b).

(2) Both this state and the other state are parties to the Interstate Compact for the Placement of Children under s. 48.99.

(3) Both this state and the other state have withdrawn from the Interstate Compact on the Placement of Children as provided in s. 48.988 (9).

(48.9895 Withdrawal from Interstate Compact on the Placement of Children. Sections 48.988 and 48.989 do not apply to a child from this state who is sent, brought, or caused to be sent or brought into another state under s. 48.988 (3) or who is placed in an institution in another state under s. 48.988 (6), or to a child from another state who is sent, brought, or caused to be sent or brought into this state under s. 48.988 (3) or who is placed in an institution in this state under s. 48.988 (6), if all of the following have occurred:

(a) Provide a process through which children who are subject to this compact are placed in safe and suitable homes in a timely manner.

(b) Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

(c) Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

(d) Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

(e) Provide for uniform data collection and information sharing between member states under this compact.

(f) Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance, and other compacts that affect the placement of, and provide services to, children who are otherwise subject to this compact.
(g) Provide for a state to retain the continuing legal jurisdiction and responsibility for placement and care of a child that the state would have had if the placement were intrastate.

(h) Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

(2) ARTICLE II — DEFINITIONS. As used in this compact:

(a) “Approved placement” means a placement that the public child placing agency in the receiving state has determined to be both safe and suitable for the child.

(b) “Assessment” means an evaluation of a prospective placement by the public child placing agency in the receiving state to determine if the placement meets the individualized needs of the child, including the child’s safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is only applicable to a placement made by a public child placing agency.

(c) “Child” means a person who has not attained the age of 18 years.

(d) “Certification” means a statement attested, declared, or sworn to before a judge or notary public.

(e) “Default” means the failure of a member state to perform the obligations or responsibilities imposed upon that state by this compact or by the bylaws or rules of the interstate commission.

(f) “Home study” means an evaluation of a home environment conducted in accordance with the applicable requirements of the state in which the home is located that documents the preparation and suitability of the placement resource for placement of a child in accordance with the laws and requirements of that state.

(g) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for services provided to Indians by the U.S. secretary of the interior because of their status as Indians, including an Alaskan native village, as defined in 43 USC 1602 (c).

(h) “Interstate commission” means the interstate commission for the placement of children established under sub. (8) (a).

(i) “Jurisdiction” means the power and authority of a court to hear and decide matters.

(j) “Legal risk placement” means a placement of a child made preliminary to an adoption in which the prospective adoptive parent has been ordered or to writing that the child can be ordered to be returned to the sending state or the birth mother’s state of residence, if different from the sending state, and in which a final decree of adoption may not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

(k) “Member state” means a state that has enacted the enabling legislation for this compact.

(L) “Noncustodial parent” means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of the child, and who is not the subject of allegations or findings of child abuse or neglect.

(m) “Nonmember state” means a state that has not enacted the enabling legislation for this compact.

(n) “Notice of residential placement” means information regarding a placement into a residential facility that is provided to the public child placing agency in the receiving state including the name, date, and place of birth of the child, and the name and address of the facility in which the child will be placed. Notice of residential placement also includes information regarding a discharge and any unauthorized absence from the facility.

(o) “Placement” means the act by a public or private child placing agency that is intended to arrange for the care or custody of a child in another state.

(p) “Private child placing agency” means any private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney, that facilitates, causes, or is involved in the placement of a child from one state to another state and that is not an instrumentality of the state or acting under color of state law.

(q) “Provisional placement” means a proposed placement that the public child placing agency in the receiving state has determined to be safe and suitable and with respect to which the receiving state, to the extent allowable, has temporarily waived its standards or requirements that are otherwise applicable to prospective foster or adoptive parents so as not to delay the placement. Completion of the receiving state’s requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

(r) “Public child placing agency” means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether the agency or entity acts on behalf of a state, county, municipality, or other governmental unit, that facilitates, causes, or is involved in the placement of a child from one state to another state.

(s) “Receiving state” means the state to which a child is sent, brought, or caused to be sent or brought.

(t) “Relative” means a person who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that the nonrelative may be regarded as a relative as determined by the court in the sending state.

(u) “Residential facility” means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and that is beyond what is needed for assessment or treatment of an acute condition. For purposes of this compact, residential facilities do not include institutions that are primarily educational, character, hospital, or other medical facilities.

(v) Except as provided in sub. (11) (g), “rule” means a written directive, mandate, standard, or principle issued by the interstate commission and promulgated under sub. (11) (g) that is of general applicability, that implements, interprets, or prescribes a policy or provision of the compact; and that has the force and effect of an administrative rule in a member state. “Rule” includes the amendment, repeal, or suspension of an existing rule.

(w) “Sending state” means the state from which the placement of a child is initiated.

(x) “Service member’s permanent duty station” means the military installation where an active duty U.S. armed services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

(y) “Service member’s declared state of legal residence” means the state in which an active duty U.S. armed services member is considered a resident for tax and voting purposes.

(z) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, or any other territorial possession of the United States.

(3) ARTICLE III — APPLICABILITY (a) Except as otherwise provided in par. (b), this compact shall apply to all of the following:

1. The interstate placement of a child who is subject to ongoing court jurisdiction in a sending state due to allegations or findings that the child has been abused, neglected, or deprived, as defined by the laws of the sending state, except that the placement of such a child into a residential facility shall only require notice of placement to the receiving state prior to placement.

2. The interstate placement of a child who has been adjudicated delinquent or unmanageable based on the laws of a sending
state and who is subject to the ongoing court jurisdiction of the sending state if any of the following apply:

(a) The child is being placed in a residential facility in another member state and is not covered under another compact.
(b) The child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.
(c) The interstate placement of any child by a public child placing agency or private child placing agency as a preliminary step to a possible adoption.

(b) This compact shall not apply to any of the following:

1. The interstate placement of a child in a custody proceeding in which a public child placing agency is not a party so long as the placement is not intended to effectuate on adoption.
2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement so long as the placement is not intended to effectuate an adoption.
3. The interstate placement of a child by a relative with the legal authority to make such a placement directly with another relative in a receiving state.
4. The placement of a child who is not subject to par. (a) into a residential treatment facility by his or her parent.
5. The placement of a child with a noncustodial parent if all of the following apply:
   a. The noncustodial parent proves to the satisfaction of a court in the sending state that he or she has a substantial relationship with the child.
   b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child.
   c. For a placement in a proceeding in which a public child placing agency is a party, the court in the sending state dismisses its jurisdiction over the proceeding.
6. A child entering the United States from a foreign country for the purpose of adoption in this country or leaving the United States to go to a foreign country for the purpose of adoption in that country.
7. Cases in which a child who is a United States citizen living overseas with his or her family, at least one member of which is in the U.S. armed services and stationed overseas, is removed and placed in a state.
8. The sending of a child by a public child placing agency or a private child placing agency to another state for a visit, as defined by the rules promulgated by the interstate commission.
9. For purposes of determining the applicability of this compact to the placement of a child with a family member who is in the U.S. armed services, the public child placing agency or private child placing agency may choose the state of the service member’s permanent duty station or the service member’s declared state of legal residence.
10. Nothing in this compact shall be construed to prohibit the concurrent application of this compact with other applicable interstate compacts including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The interstate commission may, in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, the timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

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(a) Except as provided in par. (b), when sub. (5) (b) 2. or 3. applies in a private or independent adoption, and except for an interstate placement in a custody proceeding in which a public child placing agency is not a party, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child over which the sending state would have had jurisdiction if the child had remained in the sending state. That jurisdiction shall also include the power to order the return of the child to the sending state.
(b) When an issue of child protection or custody is brought before a court in the receiving state, that court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.
(c) In a case subject to this compact that is before a court, the taking of testimony for a hearing before a judicial officer may occur in person or by telephone, by audio−video conference, or by such other means as may be approved by the rules of the interstate commission. A judicial officer may communicate with another judicial officer or with any other person involved in the interstate process as may be permitted by the codes of judicial conduct governing those judicial officers and any rules promulgated by the interstate commission.
(d) In accordance with its own laws, the court in the sending state may terminate its jurisdiction if any of the following apply:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, but only with the concurrence of the public child placing agency in the receiving state.
2. The child is adopted.
3. The child reaches the age of majority under the laws of the sending state.
4. The child achieves legal independence under the laws of the sending state.
5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state.
6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state.
7. The public child placing agency of the sending state requests termination of the jurisdiction of the court in the sending state and has obtained the concurrence of the public child placing agency in the receiving state.
(e) When a sending state court terminates its jurisdiction, the receiving state child placing agency shall be notified.
(f) Nothing in this subsection shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of turpitude, delinquency, crime, or behavior involving a child, as defined by the laws of the receiving state, committed by the child in the receiving state that would be a violation of the laws of the receiving state.
(g) Nothing in this subsection shall limit the receiving state’s ability to take emergency jurisdiction for the protection of the child.
(h) The substantive laws of the state in which an adoption of a child will be finalized shall solely govern all issues relating to the adoption of a child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except when any of the following applies:

1. The child is a ward of another court that established jurisdiction over the child prior to the placement.
2. The child is in the legal custody of a public agency in the sending state.
3. A court in the sending state has otherwise appropriately assumed jurisdiction over the child prior to the submission of the request for approval of the placement.
4. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an approved placement by the public child placing agency in the receiving state.
5. This subsection shall not apply when sub. (5) (b) 2. or 3. applies in a private or independent adoption, and except for an interstate placement in a custody proceeding in which a public child placing agency is not a party, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child over which the sending state would have had jurisdiction if the child had
content of a request for approval of the placement by the public child placing agencies of both the sending state and the receiving state. The required content that must accompany that request for approval shall include all of the following:

1. A request for approval of the placement signed by the person requesting the approval that identifies the child, the birth parents, the prospective adoptive parents, and the supervising agency.

2. The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state or, where permitted, the laws of the state where the adoption will be finalized.

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state or, where permitted, the laws of the state where the adoption will be finalized.

4. A home study.

5. An acknowledgment signed by the prospective adoptive parents that the placement is a legal risk placement.

(c) The sending state and the receiving state may request additional information or documentation prior to finalization of an approved placement, but the sending state and receiving state may not delay travel by the prospective adoptive parents with the child if the required content under par. (b) 1. to 5. has been submitted, received, and reviewed by the public child placing agencies in both the sending state and the receiving state.

(d) The approval of the public child placing agency in the receiving state for a provisional placement or an approved placement is required as provided for in the rules of the interstate commission.

(e) The request for assessment shall contain all information and be in such form as provided for in the rules of the interstate commission and the procedures for making a request shall be as provided in those rules.

(f) Upon receipt of a request from the public child placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine the safety and suitability of that placement. If the proposed placement is a placement with a relative, the public child placing agency of the sending state may request a determination of whether the placement qualifies as a provisional placement.

(g) The public child placing agency in the receiving state may request from the public child placing agency or the private child placing agency in the sending state, and shall be entitled to receive, supporting or additional information as necessary to complete the assessment or approve the placement.

(h) The public child placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the time frames established in rules promulgated by the interstate commission.

(i) For a placement by a private child placing agency, the sending state may not impose any additional requirements with respect to completion of the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.

(j) The interstate commission may develop uniform standards for assessing the safety and suitability of interstate placements.

(6) ARTICLE VI—PLACEMENT AUTHORITY. (a) Except as otherwise provided in this compact, no child who is subject to this compact may be placed into a receiving state until approval for that placement is obtained from the public child placing agency in the receiving state.

(b) If the public child placing agency in the receiving state does not approve the proposed placement, then the child may not be placed. The receiving state shall provide written documentation of any such determination in accordance with the rules promulgated by the interstate commission. That determination is not subject to judicial review in the sending state.

(c) 1. If the proposed placement is not approved, any interested party or person shall have standing to seek an administrative review of the receiving state’s determination.

2. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state under its applicable administrative procedures act.

3. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be considered approved, so long as all administrative or judicial remedies have been exhausted or the time for seeking those remedies has passed.

(7) ARTICLE VII—PLACING AGENCY RESPONSIBILITY. (a) For the interstate placement of a child made by a public child placing agency or state court, financial responsibility shall be allocated as follows:

1. The public child placing agency in the sending state shall be financially responsible for all of the following:

   a. Ongoing maintenance payments for the child during the period of the placement, unless otherwise provided for in the receiving state.

   b. Services for the child beyond the public services for which the child is eligible in the receiving state, as determined by the public child placing agency in the sending state.

2. The receiving state shall only have financial responsibility for all of the following:

   a. Any assessment conducted by the receiving state.

   b. Supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child placing agencies of the receiving state and the sending state.

   b) Nothing in par. (a) shall prohibit a public child placing agency in a sending state from entering into an agreement with a licensed agency or other person in a receiving state to conduct assessments and provide supervision.

(c) For the placement of a child by a private child placing agency preliminary to a possible adoption, the private child placing agency shall be responsible as follows:

1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption.

2. Financially responsible for the child absent a contractual agreement to the contrary.

(d) The public child placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the interstate commission.

(e) The public child placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of placement.

(f) Nothing in this compact shall be construed so as to limit the authority of the public child placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or for the provision of supervision or services for the child or from otherwise authorizing the provision of supervision or services by a licensed agency or person during the period of placement.

(g) Each member state shall provide for coordination among its branches of government concerning the state’s participation in, and compliance with, the compact and interstate commission activities, through the creation of an advisory council or the use of an existing body or board.

(h) Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the interstate commission.

(i) The public child placing agency in the sending state shall oversee compliance with the federal Indian Child Welfare Act.
(j) With the consent of the interstate commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

(B) ARTICLE VIII — INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN. (a) There is created the interstate commission for the placement of children. The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall be a joint commission of the member states and shall have all of the responsibilities, powers, and duties set forth in this section and such additional powers as may be conferred upon the interstate commission by subsequent concurrent action of the respective legislatures of the member states.

(b) 1. The interstate commission shall consist of one commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the state’s child welfare program. The appointed commissioner may vote on policy-related matters governed by this compact binding the state.

2. Each member state represented at a meeting of the interstate commission is entitled to one vote.

3. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

4. A commissioner may not delegate a vote to another member state.

5. A commissioner may delegate voting authority to another person from the commissioner’s state for a specified meeting.

(c) In addition to the commissioners of each member state, the interstate commission shall include persons who are members of interested organizations, as defined in the bylaws or rules of the interstate commission. Those members shall not be entitled to vote on any matter before the interstate commission.

(d) The interstate commission shall establish an executive committee that shall have the authority to administer the day-to-day operations and administration of the interstate commission.

The executive committee may not engage in rule making.

(9) ARTICLE IX — POWERS OF THE INTERSTATE COMMISSION. The interstate commission shall have the power to do all of the following:

(a) Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations enumerated in this compact.

(b) Provide for dispute resolution among member states.

(c) Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of this compact or the bylaws, rules, or actions of the interstate commission.

(d) Enforce compliance with this compact or the bylaws or rules of the interstate commission under sub. (12).

(e) Collect standardized data concerning the interstate placement of children who are subject to this compact as directed by its rules, which rules shall specify the data to be collected, the means of collection, and data exchange and reporting requirements.

(f) Establish and maintain offices as may be necessary for transacting the business of the interstate commission.

(g) Purchase and maintain insurance and bonds.

(h) Hire or contract for the services of personnel or consultants as may be necessary to carry out its functions under the compact and establish personnel qualification policies and rates of compensation.

(i) Establish and appoint committees and officers including an executive committee as required by sub. (10).

(j) Accept, receive, utilize, and dispose of donations and grants of money, equipment, supplies, materials, and services.

(k) Lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, real, personal, or mixed.

(L) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

(m) Establish a budget and make expenditures.

(n) Adopt a seal and bylaws governing the management and operation of the interstate commission.

(o) Report annually to the legislatures, governors, judiciary, and state advisory councils of the member states concerning the activities of the interstate commission during the preceding year. Those reports shall also include any recommendations that have been adopted by the interstate commission.

(p) Coordinate and provide education, training, and public awareness regarding the interstate movement of children for officials who are involved in that activity.

(q) Maintain books and records in accordance with the bylaws of the interstate commission.

(r) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

(10) ARTICLE X — ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION. (a) Bylaws. 1. Within 12 months after the first interstate commission meeting, the interstate commission shall adopt bylaws and rules to govern the conduct of the interstate commission as may be necessary or appropriate to carry out the purposes of the compact.

2. The bylaws and rules of the interstate commission shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent that disclosure of the information or official records would adversely affect personal privacy rights or proprietary interests.

(b) Meetings. 1. The interstate commission shall meet at least once each year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

2. Public notice shall be given by the interstate commission of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission or any of its committees may close a meeting, or portion of a meeting, if the interstate commission or committee determines by a two-thirds vote that an open meeting would be likely to do any of the following:

a. Relate solely to the interstate commission’s internal personnel practices and procedures.

b. Disclose matters that are specifically exempted from disclosure by federal law.

c. Disclose financial or commercial information that is privileged, proprietary, or confidential in nature.

d. Involve accusing a person of a crime or formally censuring a person.

e. Disclose information that is of a personal nature, if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy or would physically endanger one or more persons.

f. Disclose investigative records that have been compiled for law enforcement purposes.

(g) Specifically relate to the interstate commission’s participation in a civil action or other legal proceeding.

3. For a meeting, or portion of a meeting, that is closed under subd. 2., the interstate commission’s legal counsel or designee shall certify that the meeting may be closed and shall reference each provision under subd. 2. authorizing closure of the meeting. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in a meeting and shall pro-
vide a full and accurate summary of actions taken and the reasons for those actions, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission or by court order.

4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or other electronic communication.

(c) Officers and staff. 1. The interstate commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions, and for such compensation as the interstate commission may consider appropriate. The staff director shall serve as secretary to the interstate commission, but may not have a vote. The staff director may hire and supervise such other staff as may be authorized by the interstate commission.

2. The interstate commission shall elect, from among its members, a chairperson and a vice chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

(d) Qualified immunity, defense, and indemnification. 1. The staff director, employees, and representatives of the interstate commission shall be immune from suit and liability, either personally or as representatives of the interstate commission, for a claim for damage to or loss of property, personal injury, or other civil liability caused by, arising out of, or relating to an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of that person.

2. The liability of the staff director, employees, and representatives of the interstate commission, acting within the scope of that person’s employment, duties, or responsibilities, for any act, error, or omission occurring within that person’s state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents, except that this subdivision does not protect any person from suit or liability for any damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of that person. The interstate commission is considered to be an instrumentality of the state for the purposes of any such action.

3. The interstate commission shall defend the staff director and employees of the interstate commission and, subject to the approval of the attorney general or other appropriate legal counsel of the member state, shall defend the commissioner of a member state in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

4. To the extent not covered by the state involved, the member state, or the interstate commission, the staff director, employees, and representatives of the interstate commission shall be held harmless in the amount of any settlement or judgment, including attorney fees and costs, obtained against those persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities or that the person had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

5. ARTICLE XI — RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION. (a) The interstate commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

(b) Rule making shall occur under the criteria set forth in this subsection and the bylaws and rules adopted under this subsection. Rule making shall substantially conform to the principles of the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, volume 15, page 1 (2000), or any other administrative procedure act that the interstate commission considers appropriate, consistent with the due process requirements under the U.S. Constitution. All rules and amendments to the rules shall become binding as of the date specified in the final rule or amendment as approved by the interstate commission.

(c) When promulgating a rule, the interstate commission shall do all of the following:

1. Publish the entire text of the proposed rule and state the reason for the proposed rule.

2. Allow and invite persons to submit written data, facts, opinions, and arguments, which shall be added to the rule-making record and be made publicly available.

3. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials and other interested parties.

(d) Rules promulgated by the interstate commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

(e) Not later than 60 days after a rule is promulgated, an interested person may file a petition in the U.S. district court for the District of Columbia or in the federal district court for the district in which the interstate commission’s principal office is located for judicial review of that rule. If the court finds that the interstate commission’s action is not supported by substantial evidence in the rule-making record, the court shall hold the rule unlawful and set the rule aside.

(f) If a majority of the legislatures of the member states reject a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause the rule to have no further force and effect in any member state.

(g) The rules governing the operation of the Interstate Compact on the Placement of Children under ss. 48.988 and 48.989 shall be void no less than 12, but no more than 24, months after the first meeting of the interstate commission, as determined by the members during the first meeting.

(h) Within the first 12 months of operation, the interstate commission shall promulgate rules addressing all of the following:

1. Transition from the Interstate Compact on the Placement of Children.

2. Forms and procedures.

3. Timelines.

4. Data collection and reporting.

5. Rule making.

6. Visitation.

7. Progress reports and supervision.

8. Sharing of information and confidentiality.


10. Mediation, arbitration, and dispute resolution.

11. Education, training, and technical assistance.

12. Enforcement.

13. Coordination with other interstate compacts.

(i) 1. Upon determination by a majority of the members of the interstate commission that an emergency exists, the interstate commission shall...
commission may promulgate an emergency rule, but only if the rule is required to do any of the following:

a. Protect the children covered by this compact from an imminent threat to their health, safety, and well-being.

b. Prevent the loss of federal or state funds.

c. Meet a deadline for the promulgation of an administrative rule required by federal law.

2. An emergency rule shall become effective immediately upon promulgation so long as the usual rule-making procedures provided under this subsection are retrospectively applied to the rule as soon as is reasonably possible, but no later than 90 days after the effective date of the emergency rule.

3. An emergency rule shall be promulgated as provided for in the rules of the interstate commission.

(12) ARTICLE XII — OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT. (a) Oversight. 1. The interstate commission shall oversee the administration and operations of the compact.

2. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and the rules of the interstate commission and shall take all actions that are necessary and appropriate to effectuate the purposes and intent of the compact. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.

3. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact.

4. The interstate commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in the action. Failure to provide service of process to the interstate commission shall render any judgment, order, or other determination, however captioned or classified, void as to the interstate commission, this compact, or the bylaws or rules of the interstate commission.

(b) Dispute resolution. 1. The interstate commission shall attempt, upon the request of a member state, to resolve any dispute that is subject to the compact and that may arise among member states or between member states and nonmember states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of that mediation or dispute resolution shall be the responsibility of the parties to the dispute.

(c) Enforcement. 1. If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or rules of the interstate commission, the interstate commission may do any of the following:

a. Provide remedial training and specific technical assistance.

b. Provide written notice to the defaulting state and other member states of the nature of the default and the means of curing the default. The interstate commission shall specify the conditions by which the defaulting state must cure its default.

c. By a majority vote of the members, initiate against a defaulting member state legal action in the U.S. district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court for the district in which the interstate commission has its principal office, to enforce compliance with the compact, the bylaws, or the rules. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation including reasonable attorney fees.

d. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

(13) ARTICLE XIII — FINANCING OF THE INTERSTATE COMMISSION. (a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The aggregate amount of the annual assessment shall be in an amount that is sufficient to cover the annual budget of the interstate commission, as approved by its members each year, and shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(c) The interstate commission may not incur obligations of any kind before securing funds adequate to meet those obligations; nor may the interstate commission pledge the credit of any member state, except by and with the authority of the member state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become a part of the annual report of the interstate commission.

(14) ARTICLE XIV — MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT. (a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be July 1, 2007, or upon enactment of the compact into law by the 35th state, whichever is later. After that initial effective date, the compact shall become effective and binding as to any other member state upon enactment of the compact into law by that member state. The executive heads of the state human services administrations with ultimate responsibility for the child welfare programs of the member states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

NOTE: According to the Web site of the council of state governments, as of June 2, 2009, 9 states had enacted the compact.

(c) The interstate commission may propose amendments to the compact for enactment by the member states. An amendment does not become effective and binding on the member states until the amendment is enacted into law by unanimous consent of the member states.

(15) ARTICLE XV — WITHDRAWAL AND DISSOLUTION. (a) Withdrawal. 1. Once effective, the compact shall continue in force and remain binding upon each member state, except that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law in that state.

2. Withdrawal from this compact by a member state shall be by the enactment of legislation repealing the statute that enacted the compact into law in that state.

3. A withdrawing state shall immediately notify the president of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state. The interstate commission shall then notify the other member states of the withdrawing state’s intent to withdraw.

4. A withdrawing state is responsible for all assessments, obligations, and liabilities incurred to the effective date of the withdrawal.

5. Reinstatement in the compact following the withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the interstate commission.

(b) Dissolution of compact. 1. This compact shall dissolve upon the effective date of a withdrawal or default of a member state that reduces the membership in the compact to one member state.
48.99 \textbf{CHILDREN'S CODE} \hfill Updated 09–10 Wis. Stats. Database 166

2. Upon dissolution of this compact, the compact becomes void and shall be of no further force or effect, the business and affairs of the interstate commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

(16) \textbf{ARTICLE XVI — SEVERABILITY AND CONSTRUCTION.} (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is held unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

(17) \textbf{ARTICLE XVII — BINDING EFFECT OF COMPACT AND OTHER LAWS.} (a) Other laws. This compact does not prevent the enforcement of any other law of a member state that is not inconsistent with this compact.

(b) Binding effect of compact. 1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. If a provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, that provision shall be ineffective in that member state to the extent of the conflict with the constitutional provision in question.

(18) \textbf{ARTICLE XVIII — INDIAN TRIBES.} Notwithstanding any other provision in this compact, the interstate commission may promulgate guidelines to permit Indian tribes to use the compact to achieve any of the purposes of the compact as specified in sub. (1). The interstate commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.


48.9985 \textbf{Interstate adoption agreements.} \hfill \textbf{Definitions.} In this section:

(a) “Adoption assistance agreement” means an agreement under s. 48.975 with a child’s adoptive parents to provide specified benefits, including medical assistance, to the child, or a similar agreement in writing between an agency of another state and the adoptive parents of a child adopted in that state, if the agreement is enforceable by the adoptive parents.

(b) “Medical assistance” has the meaning given under s. 49.43 (8).

(c) “State” means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, the commonwealth of the Northern Mariana Islands or a territory or possession of the United States.

(2) \textbf{INTERSTATE AGREEMENTS AUTHORIZED.} (a) The department may, on behalf of this state, enter into interstate agreements, including the interstate compact on adoption and medical assistance, with agencies of any other states that enter into adoption assistance agreements.

(b) Each interstate agreement shall provide that, upon application by a person who has entered into an adoption assistance agreement with a party state other than the person’s state of residence, the state of the person’s residence shall provide medical assistance benefits under its own laws to the person’s adopted child.

(c) An interstate agreement may also include the following:

1. Procedures for ensuring the continued provision of developmental, child care and other social services to adopted children whose adoptive parents reside in a party state other than the one in which the adoption assistance agreement was entered into.

2. Any other provisions determined by the department and the agency of the other party state to be appropriate for the administration of the interstate agreement.

(d) An interstate agreement is revocable upon written notice by either party state to the other party state but remains in effect for one year after the date of the written notice.

(e) Each interstate agreement shall provide that the medical assistance benefits to which a child is entitled under the provisions of the interstate agreement shall continue to apply until the expiration of the adoption assistance agreement entered into by the adoptive parents in the state in which the adoption took place, whether or not the interstate agreement is revoked under par. (d).

\textit{History:} 1985 a. 308, 332.

48.999 \textbf{Expediting interstate placements of children.} The courts of this state shall do all of the following to expedite the interstate placement of children:

(1) Subject to ss. 48.396 (2) and 938.396 (2), cooperate with the courts of other states in the sharing of information.

(2) To the greatest extent possible, obtain information and testimony from agencies and parties located in other states without requiring interstate travel by those agencies and parties.

(3) Permit parents, children, other necessary parties, attorneys, and guardians ad litem in proceedings involving the interstate placement of a child to participate in those proceedings without requiring interstate travel by those persons.

\textit{History:} 2009 a. 79.
CHAPTER 938

JUVENILE JUSTICE CODE

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*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
SUBCHAPTER I
GENERAL PROVISIONS

938.01 Title, legislative intent and purposes. (1) Title. This chapter may be cited as “The Juvenile Justice Code”, and shall be liberally construed in accordance with the objectives expressed in this section.

(2) Legislative intent. It is the intent of the legislature to promote a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively. To effectuate this intent, the legislature declares the following to be equally important purposes of this chapter:

(a) To protect citizens from juvenile crime.

(b) To hold each juvenile offender directly accountable for his or her acts.

(c) To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to prevent further delinquent behavior through the development of competency in the juvenile offender, so that he or she is more capable of living productively and responsibly in the community.

(d) To provide due process through which each juvenile offender and all other interested parties are assured fair hearings, during which constitutional and other legal rights are recognized and enforced.

(e) To divert juveniles from the juvenile justice system through early intervention as warranted, when consistent with the protection of the public.

(f) To respond to a juvenile offender’s needs for care and treatment, consistent with the prevention of delinquency, each juvenile’s best interest and protection of the public, by allowing the court to utilize the most effective dispositional option.

(g) To ensure that victims and witnesses of acts committed by juveniles that result in proceedings under this chapter are, consistent with this chapter and the Wisconsin constitution, afforded the same rights as victims and witnesses of crimes committed by adults, and are treated with dignity, respect, courtesy, and sensitivity throughout those proceedings.

(3) Indian juvenile welfare; declaration of policy. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of this state for courts and agencies responsible for juvenile welfare to do all of the following:

(a) Cooperate fully with Indian tribes in order to ensure that the federal Indian Child Welfare Act is enforced in this state.

(b) Protect the best interests of Indian juveniles and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out−of−home care placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out−of−home care placement of Indian juveniles and, when an out−of−home care placement is necessary, placing an Indian juvenile in a placement that reflects the unique values of the Indian juvenile’s tribal culture and that is best able to assist the Indian juvenile in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian juvenile’s tribe and tribal community.

History: 1995 a. 77; 2003 a. 344; 2009 a. 94.

The due process standard in juvenile proceedings is fundamental fairness. Basic requirements are discussed. In Interest of D.O.H. 76 Wis. 2d 286, 251 N.W.2d 196 (1976).


938.02 Definitions. In this chapter:

(1) “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.

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

(1p) “Alcohol or 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.

(1s) “Approved treatment facility” has the meaning given in s. 961.01 (1).

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

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

(2f) “Coordinated services plan of care” has the meaning given in s. 46.56 (1) (cm).

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

(2m) “Court”, when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 48 or, when used with reference to a juvenile who is subject to s. 938.183, a court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), a municipal court.

(3) “Court intake worker” means any person designated to provide intake services under s. 938.067.

(3m) “Delinquent” means a juvenile who is 10 years of age or older who has violated any state or federal criminal law, except as provided in ss. 938.17, 938.18 and 938.183, or who has committed a contempt of court, as defined in s. 785.01 (1), as specified in s. 938.355 (6g).

(4) “Department” means the department of corrections.

(5) “Developmental disability” has the meaning given in s. 51.01 (5).

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

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

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

(8) “Guardian” means the person named by the court having the duty and authority of guardianship.
(8b) “Habitual truant” has the meaning given in s. 118.16 (1) (a).

(8d) “Indian” means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

(8g) “Indian juvenile” means an unmarried person who is under 18 years of age and who is affiliated with an Indian tribe in any of the following ways:
   (a) As a member of the Indian tribe.
   (b) As a person who is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) “Indian juvenile’s tribe” means one of the following:
   (a) The Indian tribe in which an Indian juvenile is a member or eligible for membership.
   (b) In the case of an Indian juvenile who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian juvenile has the more significant contacts.

(8p) “Indian custodian” means an Indian person who has legal custody under tribal law or custom or under state law of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), or of an Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of a temporary physical custody proceeding under ss. 939.19 to 938.21 [ss. 938.19 to 938.21] or to whom temporary physical care, custody, and control has been transferred by the parent of that juvenile.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(8r) “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. secretary of the interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602 (c).

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 48 or, if used with reference to a juvenile who is subject to s. 938.183, the judge of the court of criminal jurisdiction or, when used with reference to a juvenile who is subject to s. 938.17 (2), the judge of the municipal court.

(10m) “Juvenile”, when used without further qualification, 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, “juvenile” does not include a person who has attained 17 years of age.

(10p) “Juvenile correctional facility” means a correctional institution operated or contracted for by the department of corrections or operated by the department of health services for holding in secure custody persons adjudged delinquent. “Juvenile correctional facility” includes the Mendota juvenile treatment center under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(10r) “Juvenile detention facility” means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

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

(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 a juvenile, 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 juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) “Off-reservation trust land” means land in that state which is held in trust by the federal government for the benefit of an Indian tribe or individual and that is located outside the boundaries of an Indian tribe’s reservation.

(13) “Parent” means 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 juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, “parent” includes a person acknowledged under s. 767.805 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. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a biological parent, an Indian husband who has consented to the artificial insemination of his wife under s. 891.40, or an Indian person who has lawfully adopted an Indian juvenile, including an adoption under tribal law or custom, and includes, in the case of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, a person acknowledged under s. 767.805, a substantially similar law of another state, or tribal law or custom to be the biological father or a person adjudicated to be the biological father, but does not include any person whose parental rights have been terminated.

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

(15) “Relative” means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. For purposes of the application of s. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “relative” includes an extended family member, as defined in s. 938.028 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law or custom.

(15c) “Reservation,” except as otherwise provided in s. 938.028 (2) (e), means land in this state within the boundaries of the reservation of a tribe.

(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, maintenance, and treatment of persons residing in that facility.

(15g) “Secured residential care center for children and youth” means a residential care center for children and youth operated by a child welfare agency that is licensed under s. 48.66 (1) (b) to hold in secure custody persons adjudged delinquent.

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

(17m) “Special treatment or care” means professional services which need to be provided to a juvenile or his or her family to protect the well-being of the juvenile, prevent placement of the juvenile outside the home or meet the special needs of the juvenile. This term includes medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

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

(18j) “Tribal court” means a court that has jurisdiction over juvenile custody proceedings, and that is either a court of Indian offenses or a court established and operated under the code or custom of an Indian tribe, or any other administrative body of an Indian tribe that is vested with authority over Indian juvenile custody proceedings.
(18k) “Tribal school” has the meaning given in s. 115.001 (15m).

NOTE: Sub. (18k) was created as sub. (18e) by 2009 Wis. Act 302 and renumbered by the legislative reference bureau under s. 1392 (1) (bmn) 2.

(16m) “Truancy” has the meaning given in s. 118.16 (1) (c).

(19) “Type 1 juvenile correctional facility” means a juvenile correctional facility, but excludes any correctional institution that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(19r) “Type 2 residential care center for children and youth” means a residential care center for children and youth that is designated by the department to provide care and maintenance for juveniles who have been placed in the residential care center for children and youth under the supervision of a county department under s. 938.34 (4d).

(20) “Type 2 juvenile correctional facility” means a juvenile correctional facility that meets the criteria under sub. (10p) solely because of its status under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).

(20m) (a) “Victim” means any of the following:
1. A person against whom a delinquent act has been committed.
2. If the person specified in subd. 1 is a child, a parent, guardian or legal custodian of the child.
3. If a person specified in subd. 1 is physically or emotionally unable to exercise the rights granted under this chapter, s. 950.04 or article 1, section 9m, of the Wisconsin constitution, a person designated by the person specified in subd. 1 or a family member, as defined in s. 950.02 (3), of the person specified in subd. 1.
4. If a person specified in subd. 1 is deceased, any of the following:
   a. A family member, as defined in s. 950.02 (3), of the person who is deceased.
   b. A person who resided with the person who is deceased.
   c. If a person specified in subd. 1 has been adjudicated incompetent in this state, the guardian of the person appointed for him or her.
   (b) “Victim” does not include a juvenile alleged to have committed the delinquent act.

(21) “Victim–witness coordinator” means a person employed or contracted by the county board of supervisors under s. 950.06 to provide services for the victims and witnesses of crimes or a person employed or contracted by the department of justice to provide the services specified in s. 950.08.


938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY. In Indian juvenile custody proceedings, the best interests of the Indian juvenile shall be determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the policy specified in s. 938.01 (3).

(2) DEFINITIONS. In this section:
(a) “Extended family member” means a person who is defined as a member of an Indian juvenile’s extended family by the law or custom of the Indian juvenile’s tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian juvenile’s grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, second cousin, or steprelative.
(b) “Indian juvenile custody proceeding” means a proceeding under s. 938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which an out-of-home care placement may occur.
(c) “Out-of-home care placement” means the removal of an Indian juvenile from the home of his or her parent or Indian custodian for temporary placement in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, in the home of a guardian, from which placement the parent or Indian custodian cannot have the juvenile returned upon demand. “Out-of-home care placement” does not include holding an Indian juvenile in custody under ss. 938.19 to 938.21.
(d) “Qualified expert witness” means a person who is any of the following:
1. A member of the Indian juvenile’s tribe recognized by the Indian juvenile’s tribal community as knowledgeable regarding the tribe’s customs relating to family organization or child-rearing practices.
2. A member of another tribe who is knowledgeable regarding the customs of the Indian juvenile’s tribe relating to family organization or child-rearing practices.
3. A professional person having substantial education and experience in the person’s professional specialty and having substantial knowledge of the customs, traditions, and values of the Indian juvenile’s tribe relating to family organization and child-rearing practices.
4. A layperson having substantial experience in the delivery of juvenile and family services to Indians and substantial knowledge of the prevailing social and cultural standards and child-rearing practices of the Indian juvenile’s tribe.
(e) “Reservation” means Indian country, as defined in 18 USC 1151, or any land not covered under that section to which title is either held by the United States in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual, subject to a restriction by the United States against alienation.

(3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS. (a) Applicability. This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to any Indian juvenile custody proceeding regardless of whether the Indian juvenile is in the legal custody or physical custody of an Indian parent, Indian custodian, extended family member, or other person at the commencement of the proceeding and whether the Indian juvenile resides or is domiciled on or off of a reservation. A court assigned to exercise jurisdiction under this chapter may not determine whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian juvenile custody proceeding based on whether the Indian juvenile is part of an existing Indian family.

(b) Exclusive tribal jurisdiction. 1. An Indian tribe shall have exclusive jurisdiction over any Indian juvenile custody proceeding involving an Indian juvenile who resides or is domiciled within the reservation of the tribe, except when that jurisdiction is otherwise vested in the state by federal law and except as provided in subd. 2. If an Indian juvenile is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the juvenile.

2. Subdivision 1 does not prevent an Indian juvenile who resides or is domiciled within a reservation, but who is temporarily located off the reservation, from being taken into and held in custody under ss. 938.19 to 938.21 in order to prevent imminent physical harm or damage to the Indian juvenile. The person taking the Indian juvenile into custody or the intake worker shall immediately release the Indian juvenile from custody upon determining that holding the Indian juvenile in custody is no longer necessary to prevent imminent physical damage or harm to the Indian juvenile and shall expeditiously restore the Indian juvenile to his or her parent or Indian custodian, release the Indian juvenile to an appropriate official of the Indian juvenile’s tribe, or initiate an Indian juvenile custody proceeding as may be appropriate.

(c) Transfer of proceedings to tribe. In any Indian juvenile custody proceeding under this chapter involving an out-of-home placement of an Indian juvenile who is not residing or domiciled within the reservation of the Indian juvenile’s tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian juvenile’s parent, Indian custodian, or tribe,
transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian juvenile objects to the transfer.
2. The Indian juvenile’s tribe does not have a tribal court, or the tribal court of the Indian juvenile’s tribe declines jurisdiction.
3. The court determines that good cause exists to deny the transfer. In determining whether good cause exists to deny the transfer, the court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian juvenile’s tribe. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows by clear and convincing evidence that any of the following applies:

a. The Indian juvenile is 12 years of age or over and objects to the transfer.
b. The evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court’s rules of evidence.

c. The Indian juvenile’s tribe received notice of the proceeding under sub. (4) (a), the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date, the petition for transfer is filed by the tribe, and the petition for transfer is filed more than 6 months after the tribe received notice of the proceeding.

(d) Declination of jurisdiction. If the court assigned to exercise jurisdiction under this chapter determines that the petitioner in an Indian juvenile custody proceeding has improperly removed the Indian juvenile from the custody of his or her parent or Indian custodian or has improperly retained custody of the Indian juvenile after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian juvenile to the custody of the parent or Indian custodian, unless the court determines that returning the Indian juvenile to his or her parent or Indian custodian would subject the Indian juvenile to substantial and immediate danger or the threat of that danger.

(e) Intervention. An Indian juvenile’s Indian custodian or tribe may intervene at any point in an Indian juvenile custody proceeding under this chapter.

(f) Full faith and credit. The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian juvenile custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity.

(4) COURT PROCEEDINGS. (a) Notice. In any involuntary proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of a juvenile whom the court knows or has reason to know is an Indian juvenile, the party seeking the out-of-home care placement shall, for the first hearing of the proceeding, notify the Indian juvenile’s parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail. If the identity or location of the Indian juvenile’s parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) Appointment of counsel. Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from the home of his or her parent or Indian custodian or the placement of the Indian juvenile in an out-of-home care placement, the Indian juvenile’s parent or Indian custodian shall have the right to be represented by court-appointed counsel as provided in s. 938.23 (2g). The court may also, in its discretion, appoint counsel for the Indian juvenile under s. 938.23 (1m) or (3) if the court finds that the appointment is in the best interests of the Indian juvenile.

(c) Examination of reports and other documents. Each party to a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of an Indian juvenile shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the out-of-home care placement may be based.

(d) Out-of-home care placement; serious damage and active efforts. The court may not order an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) to be removed from the home of the Indian juvenile’s parent or Indian custodian and placed in an out-of-home care placement unless all of the following occur:

1. The court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses chosen in the order of preference listed in par. (e), that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile.
2. The court finds by clear and convincing evidence that active efforts, as described in par. (f) 1., have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. The court shall make that finding notwithstanding that a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies.

(e) Qualified expert witness; order of preference. 1. Any party to a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home placement of an Indian juvenile may call a qualified expert witness. Subject to subd. 2., a qualified expert witness shall be chosen in the following order of preference:

a. A member of the Indian juvenile’s tribe described in sub. (2) (d) 1.

b. A member of another tribe described in sub. (2) (d) 2.

c. A professional person described in sub. (2) (d) 3.

d. A layperson described in sub. (2) (d) 4.

2. A qualified expert witness from a lower order of preference may be chosen only if the party calling the qualified expert witness shows that it has made a diligent effort to secure the attendance of a qualified expert witness from a higher order of preference. A qualified expert witness from a lower order of preference may not be chosen solely because a qualified expert witness from a higher order of preference is able to participate in the Indian juvenile custody proceeding only by telephone or live audiovisual means as prescribed in s. 907.13 (2). The fact that a qualified expert witness called by one party is from a lower order of preference under subd. 1. than a qualified expert witness called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witnesses. In weighing the testimony of all witnesses, the court shall consider as paramount the best interests of the Indian juvenile as provided in s. 938.01 (3). The court shall determine the qualifications of a qualified expert witness as provided in ch. 907.

(f) Active efforts standard. 1. The court may not order an Indian juvenile to be removed from the home of the Indian juvenile’s parent or Indian custodian and placed in an out-of-home care placement unless the evidence of active efforts under par. (d)
2. shows that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian juvenile’s tribe and that utilizes the available resources of the Indian juvenile’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian juvenile, other individual Indian caregivers, and other culturally appropriate service providers. The court’s consideration of whether active efforts were made under par. (d) 2. shall include whether all of the following activities were conducted:
   a. Representatives designated by the Indian juvenile’s tribe with substantial knowledge of the prevailing social and cultural standards and child-rearing practices within the tribal community were requested to evaluate the circumstances of the Indian juvenile’s family and to assist in developing a case plan that uses the resources of the tribe and of the Indian community, including traditional and customary support, actions, and services, to address those circumstances.
   b. Representatives of the Indian juvenile’s tribe were identified, notified, and invited to participate in all aspects of the Indian juvenile custody proceeding at the earliest possible point in the proceeding and their advice was actively solicited throughout the proceeding.
   c. Extended family members of the Indian juvenile, including extended family members who were identified by the Indian juvenile’s tribe or parents, were notified and consulted with to identify and provide family structure and support for the Indian juvenile, to assure cultural connections, and to serve as placement resources for the Indian juvenile.
   d. Arrangements were made to provide natural and unsupervised family interaction in the most natural setting that can ensure the Indian juvenile’s safety, as appropriate to the goals of the Indian juvenile’s health, safety, and welfare effectively in the Indian juvenile’s home.
   e. All available family preservation strategies were offered or employed and the involvement of the Indian juvenile’s tribe was requested to identify those strategies and to ensure that those strategies are culturally appropriate to the Indian juvenile’s tribe.
   f. Community resources offering housing, financial, and transportation assistance and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian juvenile’s family with special needs were identified, information about those resources was provided to the Indian juvenile’s family, and the Indian juvenile’s family was actively assisted or offered active assistance in accessing those resources.
   g. Monitoring of client progress and client participation in services was provided.
   h. A consideration of alternative ways of addressing the needs of the Indian juvenile’s family was provided, if services did not exist or if existing services were not available to the family.
2. If any of the activities specified in subd. 1. a. to h. were not conducted, the person seeking the out-of-home care placement shall submit documentation to the court explaining why the activity was not conducted.

(5) INVALIDATION OF ACTION. Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out-of-home care placement, any parent or Indian custodian from whose custody that Indian juvenile was removed, or the Indian juvenile’s tribe may move the court to invalidate that out-of-home care placement on the grounds that out-of-home care placement shall invalidate the out-of-home care placement.

(6) PLACEMENT OF INDIAN JUVENILE. (a) Out-of-home care placement; preferences. Any Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in the least restrictive setting that most approximates a family, that meets the Indian juvenile’s special needs, if any, and that is within reasonable proximity to the Indian juvenile’s home, taking into account those special needs. Subject to pars. (b) to (d), in placing such an Indian juvenile in an out-of-home care placement, preference shall be given, in the absence of good cause, as described in par. (d), to the contrary, to a placement in one of the following, in the order of preference listed:
   1. The home of an extended family member of the Indian juvenile.
   2. A foster home licensed, approved, or specified by the Indian juvenile’s tribe.
   3. An Indian foster home licensed or approved by the department, a county department, or a child welfare agency.
   4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian juvenile.
   (am) Temporary physical custody; preferences. Any Indian juvenile in need of protection or services under s. 938.205 (1) shall be placed in compliance with par. (a) or, if applicable, par. (b), unless the person responsible for determining the placement finds good cause, as described in par. (d), for departing from the order of placement preference under par. (a) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian juvenile shall be placed in compliance with the order of placement preference under par. (a) or, if applicable, par. (b).
   (b) Tribal or personal preferences. In placing an Indian juvenile under par. (a) or (am), if the Indian juvenile’s tribe has established, by resolution, an order of preference that is different from the order specified in par. (a), the order of preference established by that tribe shall be followed, in the absence of good cause, as described in par. (d), to the contrary, so long as the placement is the least restrictive setting appropriate for the Indian juvenile’s needs as specified in par. (a). When appropriate, the preference of the Indian juvenile or parent shall be considered, and, when a parent who has consented to the placement evidences a desire for anonymity, that desire shall be given weight, in determining the placement.
   (c) Social and cultural standards. The standards to be applied in meeting the placement preference requirements of this subsection shall be the prevailing social and cultural standards of the Indian community in which the Indian juvenile’s parents or extended family members reside or with which the Indian juvenile’s parents or extended family members maintain social and cultural ties.
   (d) Good cause. 1. Whether there is good cause to depart from the order of placement preference under par. (a) or (b) shall be determined based on any one or more of the following considerations:
      a. When appropriate, the request of the Indian juvenile’s parent or, if the Indian juvenile is of sufficient age and developmental level to make an informed decision, the Indian juvenile, unless the request is made for the purpose of avoiding the application of this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963.
      b. Any extraordinary physical, mental, or emotional health needs of the Indian juvenile requiring highly specialized treatment services as established by the testimony of an expert witness, including a qualified expert witness. The length of time that an
Indian juvenile has been in a placement does not, in itself, constitute an extraordinary emotional health need.

c. The unavailability of a suitable placement for the Indian juvenile after diligent efforts have been made to place the Indian juvenile in the order of preference under par. (a) or (b).

2. The burden of establishing good cause to depart from the order of placement preference under par. (a) or (b) shall be on the party requesting that departure.

(e) Report of placement. A county department or a child welfare agency shall maintain a record of each out-of-home care placement made of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian juvenile’s tribe.

(7) REMOVAL FROM OUT-OF-HOME CARE PLACEMENT. If an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) is removed from an out-of-home care placement for the purpose of placing the Indian juvenile in another out-of-home care placement, a preadoptive placement, as defined in s. 48.028 (2) (6), or an adoptive placement, as defined in s. 48.028 (2) (a), the placement shall be made in accordance with this section and s. 48.028. Removal of such an Indian juvenile from an out-of-home care placement for the purpose of returning the Indian juvenile to the home of the parent or Indian custodian from whose custody the Indian juvenile was originally removed is not subject to this section.

(8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child Welfare Act, 25 USC 1901 to 1963, supersedes this chapter in any Indian juvenile custody proceeding governed by that act, except that in any case in which this chapter provides for the devolution of the director’s authority in the case of temporary absence, illness, disability to act in his or her supervisory functions.

3. The county board of supervisors shall establish policies and rules for the management and administration of the nonjudicial operations of the children’s court center. The director of the center shall report to, and is responsible to, the director of the county department relating to the center director’s duty to execute the policies and rules governing the center, including activities of probation officers whenever they are not performing services for the court. The director of the center is responsible for preparing and submitting to the county board of supervisors of the annual budget for the center except for the judicial functions or responsibilities which are delegated by law to the court and clerk of circuit court. The county board of supervisors, in organizing the office of director, shall provide for the devolution of the director’s authority in the case of temporary absence, illness, disability to act in his or her supervisory functions.

4. All personnel of the intake and probation sections and of the juvenile detention facilities shall be appointed under civil service by the director, except that existing court service personnel having permanent civil service status may be reassigned to any of the sections within the center specified in this subdivision.

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

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

(b) Notwithstanding par. (a), the county board of supervisors may make changes in the administration of services to the children’s court center in order to qualify for the maximum amount of federal and state aid as provided in sub. (4) and ss. 46.495 and 46.569.

(2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or the court, or both, to provide intake services under s. 938.067 and the staff needed to provide dispositional services under s. 938.069. Intake services shall be provided by employees of the court or the county department and may not be subcontracted to other individuals or agencies, except as provided in par. (am). Intake workers shall be governed in their intake work, including their responsibilities for requesting the filing of a petition and entering into a deferred prosecution agreement, by general written policies established by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(am) 1. A county that had intake services under this chapter subcontracted from the county sheriff’s department on district attorney or assistant corporation counsel, or both, who shall be assigned to the center to provide investigative and legal work in cases under this chapter and ch. 48.

2. The chief judge of the judicial administrative district shall establish written judicial policies governing intake and court services for juvenile matters under this chapter and the director of the center shall execute the policies. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court, and may delegate his or her supervisory functions.

JUVENILE JUSTICE CODE 938.06
April 1, 1980, may continue to subcontract those intake services from the county sheriff’s department.

2. A county in which the county sheriff’s department operates a juvenile detention facility may subcontract intake services under this chapter from the county sheriff’s department as provided in this subdivision. If a county subcontracts intake services under this subdivision, employees of the county sheriff’s department who staff the juvenile detention facility may make secure custody determinations under s. 938.208 between the hours of 6 p.m. and 6 a.m. Such a determination shall be reviewed by an intake worker employed by the court or county department within 24 hours after it is made.

(b) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, excluding county sheriff’s department employees who provide intake services under par. (am) 2., shall have the qualifications required to perform entry level case work in a county department. All intake workers providing services under this chapter who begin employment after May 15, 1980, including county sheriff’s department employees who provide intake services under par. (am) 2., shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

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

3. INTAKE SERVICES. The court or county department responsible for providing intake services under s. 938.067 shall specify one or more persons to provide intake services. If there is more than one person, one of the persons shall be designated as chief and shall supervise the other persons.

4. STATE AID. State aid to any county for juvenile delinquency-related court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 48.569, except as provided in s. 301.26. Counties having a population of less than 500,000 may use funds received under ss. 48.569 (1) (d) and 301.26, including county or federal revenue sharing funds allocated to match funds received under s. 48.569 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court-attached intake services or $30,000 per county per calendar year, whichever is less.

5. SHORT-TERM DETENTION AS A DISPOSITION OR SANCTION OR FOR VIOLATION OF ORDER. (a) The board of supervisors of any county may, by resolution, authorize the court to do any of the following:

1. Use placement in a juvenile detention facility or juvenile portion of the county jail as a disposition under s. 938.34 (3) (f), as a sanction under s. 938.355 (6m) (a) 1., or as a place of short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2.

2. Use commitment 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), as a disposition under s. 938.34 (6) (am).

(b) The use by the court of a disposition under s. 938.34 (3) (f) or (6) (am) or a sanction under s. 938.355 (6m) (a) 1. or short-term detention under s. 938.355 (6d) (a) 1. or 2. or (b) 1. or 2. or 938.534 (1) (b) 1. or 2. is subject to any resolution adopted under par. (a).


Cross-reference: See also ch. DOC 399, Wis. adm. code.

938.067 Powers and duties of intake workers. To carry out the objectives of this chapter, intake workers shall do all of the following:

1. SCREENING. Provide intake services 24 hours a day, 7 days a week, for the purpose of screening juveniles taken into custody and not released under s. 938.20 (2).

(2) INTERVIEWING. Interview, if possible, any juvenile who is taken into physical custody and not released, and, if appropriate, other available concerned parties. If the juvenile cannot be interviewed, the intake worker shall consult with the juvenile’s parent or a responsible adult. No juvenile may be placed in a juvenile detention facility unless the juvenile has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the juvenile is or the hour is unreasonable, as defined by written court intake rules, and if the juvenile meets the criteria under s. 938.208, the intake worker, after consulting by telephone with the law enforcement officer who took the juvenile into custody, may authorize the secure holding of the juvenile while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the juvenile was taken into custody.

(3) WHETHER JUVENILE SHOULD BE HELD. Determine whether the juvenile shall be held under s. 938.205 and policies promulgated under s. 938.06 (1) or (2).

(4) WHERE JUVENILE SHOULD BE HELD. If the juvenile is not released, determine where the juvenile shall be held.

(5) CRISIS COUNSELING. Provide any necessary crisis counseling during the intake process.

(6) REQUEST FOR PETITION; DEFERRED PROSECUTION. Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into deferred prosecution agreements under policies promulgated under s. 938.06 (1) or (2).

(6g) VICTIMS’ RIGHTS. Provide information and notices to and confer with victims as required under s. 938.346 (1m).

(6m) MULTIDISCIPLINARY SCREEN. Conduct the multidisciplinary screen in counties that have a pilot program under s. 938.547.

(7) REFERRALS. Make referrals of cases to other agencies if their assistance is needed or desirable.

(8) INTERIM RECOMMENDATIONS. Make interim recommendations to the court concerning juveniles awaiting final disposition under s. 938.355.

(8m) TAKING JUVENILES INTO CUSTODY. Take juveniles into custody under ss. 938.355 (6d) (a), (b) and (c) and 938.534 (1) (b) and (c).

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

History: 1995 a. 77; 1997 a. 80, 181, 205; 2005 a. 344.

938.069 Powers and duties of disposition staff.

1. DUTIES. Subject to sub. (2), the staff of the department, the court, a county department, or a licensed child welfare agency designated by the court to carry out the objectives of this chapter shall:

(a) Supervise and assist a juvenile under a deferred prosecution agreement, a consent decree or an order of the court.

(b) Perform individual and family counseling.

(c) Make an affirmative effort, and investigate and develop resources, to obtain necessary or desired services for the juvenile and the juvenile’s family.

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

(d) Provide aftercare services for a juvenile released from a juvenile correctional facility or a secured residential care center for children and youth.

(dm) Take juveniles into custody under ss. 938.355 (6d) (a), (b) and (c) and 938.534 (1) (b) and (c).

(e) Perform any other court-ordered functions consistent with this chapter.

(2) AGENCY APPROVAL NEEDED. Licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested.
(3) **INTAKE SERVICES.** A court or county department responsible for disposition staff may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

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

**History:** 1995 a. 77; 1997 a. 205; 1999 a. 9; 2005 a. 344.

**938.07 Additional sources of court services.** If the county board of supervisors has complied with s. 938.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(2) **LICENSED CHILD WELFARE AGENCY.** The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The agency shall not be reimbursed for any costs of these services but may be reimbursed out of funds made available to the court for the actual and necessary expenses incurred in the performance of duties for the court.

(3) **COUNTY DEPARTMENT IN POPULOUS COUNTIES.** In counties having a population of 500,000 or more, the court may order the director of the county department to provide emergency shelter care services to any juvenile whose need for the services, either by reason of need of protection and services or delinquency, is determined by the intake worker under s. 938.205. The court may authorize the director to appoint members of the county department to furnish emergency shelter care services for the juvenile. The emergency shelter care may be provided under s. 938.207.

(4) **COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES.** Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a juvenile if special treatment or care has been ordered under s. 938.34 (6) and if s. 938.362 (4) applies.

**History:** 1995 a. 77; 2005 a. 344.

**938.08 Duties of person furnishing services to court.**

(1) **INVESTIGATIONS; REPORTS.** A person appointed to furnish services to the court under ss. 938.06 and 938.07 shall make any investigations and exercise any discretionary powers that the court may direct, keep a written record of the investigations, and submit a report to the court. The person shall keep informed concerning the conduct and condition of the juvenile under the person’s supervision and shall report on the conduct and condition as the court directs.

(2) **POWER TO TAKE JUVENILE INTO CUSTODY.** LIMITS. Except as provided in sub. (3) and ss. 938.355 (6d) and 938.534 (1), a person authorized to provide or provide or taking intakes or dispositional services for the court under s. 938.06 or 938.067 has the power of police officers and deputy sheriffs only for the purpose of taking a juvenile into physical custody when the juvenile comes voluntarily, is suffering from illness or injury, or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

(3) **CONDITIONS FOR CERTAIN OTHER PERSONS TO TAKE JUVENILE INTO CUSTODY.** (a) In addition to the law enforcement authority under sub. (2), department personnel designated by the department and personnel of an agency contracted with under s. 301.08 (1) (b) 3. and designated by agreement between the agency and the department have the power of law enforcement authorities to take a juvenile into physical custody under the following conditions:

1. If they are in prompt pursuit of a juvenile who has run away from a juvenile correctional facility or a residential care center for children and youth.

2. If the juvenile has failed to return to a juvenile correctional facility or a residential care center for children and youth after any authorized absence.

(b) A juvenile who is taken into custody under par. (a) may be returned directly to the juvenile correctional facility or residential care center for children and youth and shall have a hearing regarding placement in disciplinary status in accordance with ch. 227.


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

(1) **DELINQUENCY.** By the district attorney, in any matter under s. 938.12.

(2) **CIVIL LAW VIOLATION.** By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter concerning a civil law violation under s. 938.125. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd-numbered year and the board notifies the department of administration of that change by January 1 of that year.

(3) **MUNICIPAL ORDINANCE VIOLATION.** By the city, village, or town attorney, in any matter concerning a city, village, or town ordinance violation, respectively, under s. 938.125.

(4) **COUNTY ORDINANCE VIOLATION.** By an appropriate person designated by the county board of supervisors in any matter concerning a county ordinance violation under s. 938.125.

(5) **JUVENILE IN NEED OF PROTECTION OR SERVICES.** By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter under s. 938.13. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd-numbered year and the board notifies the department of administration of that change by January 1 of that year.

(6) **INTERSTATE COMPACT.** By an appropriate person designated by the county board of supervisors in any matter arising under s. 938.14.

**History:** 1995 a. 77; 1997 a. 80; 2005 a. 344.

**938.10 Power of the judge to act as intake worker.** The duties of the intake worker may be carried out by the judge at his or her discretion, except that if a request to file a petition is made, a citation is issued, or a deferred prosecution agreement is entered into, the judge is disqualified from participating further in the proceedings.

**History:** 1995 a. 77; 1997 a. 80; 2005 a. 344.

**SUBCHAPTER III**

**JURISDICTION**
938.12 JUVENILE JUSTICE CODE

A contempt of court allegation did not support a determination of delinquency. In Interest of V.G. 111 Wis. 2d 647, 331 N.W.2d 632 (Ct. App. 1983).

A prior adult proceeding that litigated the question of the respondent’s age collaterally estopped him from relitigating the same question in juvenile court, where the juvenile court had subject matter jurisdiction of the case. In Interest of H.N.T. 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Juvenile court proceedings are commenced under sub. (2) upon filing the petition. The child need not appear in juvenile court before reaching age 18 for the court to retain jurisdiction. In Interest of D.W.B. 158 Wis. 2d 398, 462 N.W.2d 520 (1990).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition prior to a plea hearing is not required for waiver of jurisdiction under sub. (2). In Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

The age of the defendant at the time of charging of jurisdiction regardless of the defendant’s age at the time of the offense. State v. Antola, 168 Wis. 2d 248, 484 N.W.2d 138 (1992).

Wisconsin courts have jurisdiction over resident juveniles alleged to be delinquent because they violated another state’s criminal laws. 70 Atty. Gen. 143.


NOTE: The above annotations cite to s. 48.12, the predecessor statute to s. 938.12.

(1) As provided under s. 938.17.

(2) The court has exclusive jurisdiction over a juvenile alleged to have violated an ordinance enacted under s. 118.163 (2) only if evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).


938.13 Jurisdiction over juveniles alleged to be in need of protection or services. Except as provided in s. 938.028 (3), the court has exclusive jurisdiction over a juvenile alleged to be in need of protection or services which can be ordered by the court if any of the following conditions applies:

(4) UNCONTROLLABLE. The juvenile’s parent or guardian signs the petition for jurisdiction under this subsection and is unable or needs assistance to control the juvenile.

(5) HABITUALLY TRUANT FROM SCHOOL. Except as provided under s. 938.17 (2), the juvenile is habitually truant from school and evidence is provided by the school attendance officer that the activities under s. 118.16 (5) have been completed or were not required to be completed as provided in s. 118.16 (5m).


938.14 Jurisdiction over interstate compact proceedings. The court has exclusive jurisdiction over proceedings under the Interstate Compact on Juveniles under s. 938.991 and over proceedings under the Interstate Compact for Juveniles under s. 938.999.

History: 1995 a. 77; 2005 a. 234.

938.15 Jurisdiction of other courts to determine legal custody. Except as provided in s. 938.028 (3), nothing in this chapter deprives another court of the right to determine the legal custody of a juvenile by habeas corpus or to determine the legal custody or guardianship of a juvenile if the legal custody or guardianship is incidental to the determination of an action pending in that court. Except as provided in s. 938.028 (3), the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 is paramount in all cases involving juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

History: 1995 a. 77; 2005 a. 344; 2009 a. 94.

938.17 Jurisdiction over traffic, boating, snowmobile, all-terrain vehicle, and utility terrain vehicle violations and over civil law and ordinance violations. (1) TRAFFIC VIOLATIONS. SNOWMOBILE VIOLATIONS. ALL-TERAIN VEHICLE VIOLATIONS. (2) TRAFFIC VIOLATIONS. SNOWMOBILE VIOLATIONS. ALL-TERAIN VEHICLE VIOLATIONS. (2) TRAFFIC VIOLATIONS. SNOWMOBILE VIOLATIONS. ALL-TERAIN VEHICLE VIOLATIONS.

History: 1995 a. 77; 2005 a. 234.

NOTE: Section 938.17 (title) and sub. (1) are as amended eff. 7–1–12 by 2011 Wis. Act 298. Prior to 7–1–12 it read:

938.17 Jurisdiction over traffic, boating, snowmobile, all-terrain vehicle violations and over civil law and ordinance violations. (1) TRAFFIC VIOLATIONS. SNOWMOBILE VIOLATIONS. ALL-TERAIN VEHICLE VIOLATIONS. EXCEPT FOR VIOLATIONS OF ss. 342.06 (2) AND 344.48 (1), AND VIOLATIONS OF ss. 30.67 (1) AND 346.67 (1) WHEN DEATH OR INJURY OCCURS, COURTS OF CRIMINAL AND CIVIL JURISDICTION HAVE EXCLUSIVE JURISDICTION IN PROCEEDINGS AGAINST JUVENILES 16 YEARS OF AGE OR OLDER FOR VIOLATIONS OF s. 23.33, OF ss. 30.50 TO 30.80, OF chs. 341 TO 351, AND OF TRAFFIC REGULATIONS, AS DEFINED IN s. 345.28 (1). A JUVENILE CHARGED WITH A TRAFFIC VIOLATION IS TREATED AS AN ADULT BEFORE THE TRIAL OF THE PROCEEDING EXCEPT THAT THE JUVENILE MAY BE HELD IN SECURE CUSTODY ONLY IN A JUVENILE DETENTION FACILITY. A JUVENILE CONVICTED OF A TRAFFIC VIOLATION IS TREATED AS AN ADULT FOR SENTENCING PURPOSES EXCEPT AS FOLLOWS:

NOTE: As amended eff. 7–1–12 by 2011 Wis. Act 298. Prior to 7–1–12 it read:

(1) The court may disregard any minimum period of incarceration specified for the offense.

938.135 Referral of juveniles to proceedings under ch. 51 or 55. (1) JUVENILE WITH DEVELOPMENTAL DISABILITY, MENTAL ILLNESS, OR ALCOHOL OR DRUG DEPENDENCY. If a juvenile alleged to be delinquent or in need of protection or services is before the court and appears to have a developmental disability or mental illness or to be drug dependent or suffering from alcoholism, the court may proceed under ch. 51 or 55.

(2) ADMISSIONS, PLACEMENTS, AND COMMITMENTS TO INPATIENT FACILITIES. ANY VOLUNTARY OR INVOLUNTARY ADMISSIONS, PLACEMENTS, OR COMMITMENTS OF A JUVENILE MADE IN OR TO AN INPATIENT FACILITY, AS DEFINED IN s. 51.01 (10), OTHER THAN A COMMITMENT UNDER s. 938.34 (6) (am), ARE GOVERNED BY ch. 51 OR 55.

History: 1995 a. 77; 2005 a. 344.

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*2009–10 Wis. Stats. database current through 2011 Wis. Act 219. includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on This Website Official?
b. If the court orders the juvenile to serve a period of incarceration of less than 6 months, the juvenile may serve that period of incarceration only in a juvenile detention facility.

c. If the court of civil or criminal jurisdiction orders the juvenile to serve a period of incarceration of 6 months or more, that court shall order the court assigned to exercise jurisdiction under this chapter and ch. 48 to order one or more of the dispositions under s. 938.34, including placement of the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, if appropriate.

(2) CIVIL LAW AND ORDINANCE VIOLATIONS. (a) Concurrent municipal and juvenile court jurisdiction; ordinance violations. 1. Except as provided in subd. 1m. and sub. (1), municipal courts have concurrent jurisdiction with the court assigned to exercise jurisdiction under this chapter and ch. 48 in proceedings against juveniles 12 years of age or over for violations of county, town, village, or other municipal ordinances. If evidence is provided by the school attendance officer that the activities under s. 118.16 (5m) have been completed or were not required to be completed as provided in s. 118.16 (5m), the municipal court specified in subd. 2. may exercise jurisdiction in proceedings against a juvenile for a violation of an ordinance enacted under s. 118.163 (2) regardless of the juvenile's age and regardless of whether the court assigned to exercise jurisdiction under this chapter and ch. 48 has jurisdiction under s. 938.13 (6).

1m. Except as provided in sub. (1), municipal courts have exclusive jurisdiction in proceedings against juveniles 12 years of age or over for violations of municipal ordinances enacted under ch. 349 that are in conformity with chs. 341 to 349. When a juvenile 12 years of age or over is alleged to have violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance or, if there is no municipal court in the municipality that enacted the ordinance, the juvenile may be issued a citation or referred to intake as provided in par. (b). If a municipal court finds that a juvenile has violated a municipal ordinance enacted under ch. 349 that is in conformity with chs. 341 to 349, the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under sub. (2) (cm).

2. a. In this subdivision, “administrative center” means the main administrative offices of a school district.

b. The municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the same municipality as the administrative center of the school district in which the juvenile is enrolled, if that municipality has adopted an ordinance under s. 118.163.

c. If the municipality specified under subd. 2. b. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality in which the school in which the juvenile is enrolled is located, if that municipality has adopted an ordinance under s. 118.163.

d. If the municipality specified under subd. 2. b. or c. has not adopted an ordinance under s. 118.163, the municipal court that may exercise jurisdiction under subd. 1. is the municipal court that is located in the municipality in which the juvenile resides, if that municipality has adopted an ordinance under s. 118.163.

3. Except as provided in subd. 1m., when a juvenile is alleged to have violated a municipal ordinance, one of the following may occur:

a. The juvenile may be issued a citation directing the juvenile to appear in municipal court or make a deposit or stipulation and deposit in lieu of appearance.

b. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

c. The juvenile may be referred to intake for a determination whether a petition should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48 under s. 938.125.

(b) Juvenile court jurisdiction; civil law and ordinance violations. When a juvenile 12 years of age or older is alleged to have violated a civil law punishable by a forfeiture or to have violated a municipal ordinance but there is no municipal court in the municipality, one of the following may occur:

1. The juvenile may be issued a citation directing the juvenile to appear in the court assigned to exercise jurisdiction under this chapter and ch. 48 or make a deposit or stipulation and deposit in lieu of appearance as provided in s. 938.237.

2. The juvenile may be referred to intake for a determination whether a petition under s. 938.125 should be filed in the court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) Citation procedures. The citation procedures described in ch. 800 govern proceedings involving juveniles in municipal court, except that this chapter governs the taking and holding of a juvenile in custody and par. (cg) governs the issuing of a summons to the juvenile’s parent, guardian, or legal custodian. When a juvenile is before the court assigned to exercise jurisdiction under this chapter and ch. 48 upon a citation alleging that the juvenile violated a civil law or municipal ordinance, the procedures specified in s. 938.237 apply. If a citation is issued to a juvenile, the issuing agency shall notify the juvenile’s parent, guardian, and legal custodian within 7 days. The agency issuing a citation to a juvenile who is 12 to 15 years of age for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2) or an ordinance conforming to one of those statutes shall send a copy to an intake worker under s. 938.24 for informational purposes only.

(cg) Summons procedures. After a citation is issued, unless the juvenile and his or her parent, guardian, and legal custodian voluntarily appear, the municipal court may issue a summons requiring the parent, guardian, or legal custodian of the juvenile to appear personally at any hearing involving the juvenile and, if the court so orders, to bring the juvenile before the court at a time and place stated. Section 938.273 governs the service of a summons under this paragraph, except that the expense of service or publication of a summons and of the travelling expenses and fees of a person summoned allowed in ch. 885 shall be a charge on the municipality of the court issuing the summons when approved by the court. If any person summoned under this paragraph fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under s. 785.06. If a summons cannot be served or if the person served fails to obey the summons or if it appears to the court that the service will be ineffective, a capias may be issued for the juvenile and for the parent, guardian, or legal custodian.

(cm) Authorization for dispositions and sanctions. A city, village, or town may adopt an ordinance or bylaw specifying which of the dispositions under ss. 938.343 and 938.344 and sanctions under s. 938.355 (6) (d) and (6m) the municipal court of that city, village, or town is authorized to impose or to petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose. The use by the court of those dispositions and sanctions is subject to any ordinance or bylaw adopted under this paragraph.

(d) Disposition; ordinance violations generally. 1. If a municipal court finds that the juvenile violated a municipal ordinance other than an ordinance enacted under ch. 349 or an ordinance that conforms to s. 125.07 (4) (a) or (b), 125.085 (3) (b), 125.09 (2), 961.573 (2), 961.574 (2), or 961.575 (2), the court shall enter any of the dispositional orders permitted under s. 938.343 that are authorized under par. (cm). If a juvenile fails to pay the forfeiture imposed by the municipal court, the court may not impose a jail sentence but may suspend any license issued under ch. 29 for not less than 30 days nor more than 5 years, or suspend the juvenile’s

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official? *
operating privilege, as defined in s. 340.01 (40), for not more than 2 years.

2. If a court suspends a license or privilege under subd. 1., the court shall immediately take possession of the applicable license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department that if issued under ch. 29 or, if the license is issued under ch. 2, the court shall enter a dispositional order under s. 938.344 that is authorized under par. (cm).

(f) Notice to victims. If the act the juvenile committed resulted in personal injury or damage to or loss of the property of another, then, if the license is issued under ch. 29, return the license to the person.

3. Before imposing any sanction, the court shall hold a hearing on the motion. Notice of the motion shall be given to the juvenile and the juvenile’s parent, guardian, or legal custodian.

4. If a court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction specified in s. 938.355 (6m) (a) 1g., on a petition described in subd. 2m., that court shall order the municipality of the possible sanctions under s. 938.355 (6) (d) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction specified in s. 938.355 (6m) (a) 1g., on a petition described in subd. 2m., that court shall order the municipality of the possible sanctions under s. 938.355 (6m) (a) 1g., if authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3. If a motion requesting the court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order.

4. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposing any sanction, the court shall hold a hearing at the juvenile’s parent, guardian, or legal custodian.

5. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

5g. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

(3) SAFETY AT SPORTING EVENTS If the court assigns to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) 1g., if authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2m. If a juvenile who has violated a municipal ordinance enacted under s. 118.163 (1m) violates a condition of his or her dispositional order, the municipal court may impose on the juvenile the sanction specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

3. If a motion requesting the court to impose or petition for a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the municipal attorney, or the court that entered the dispositional order.

4. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

5g. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

4m. If the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that the juvenile is a habitual offender, that court may order the juvenile to enter a dispositional order under s. 938.342 (1m), that court shall order the juvenile any of the sanctions specified in s. 938.355 (6m) (a) that are authorized under par. (cm) for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.
The court and shall contain a brief statement of the facts supporting the juvenile shall have access to the social records and other court shall base its decision whether to waive jurisdiction on the specified in sub. (5). The agency shall file the report with the court defined in s. 938.38 (1) (a), to submit a report analyzing the criteria qualify himself or herself from any future proceedings on the case.

If the court initiates the petition for waiver of jurisdiction, the judge shall disqualify himself or herself from any future proceedings on the case.

The court may designate an agency, as defined in s. 938.38 (1) (a), to submit a report analyzing the criteria specified in sub. (5). The agency shall file the report with the court and the court shall cause copies of the report to be given to the juvenile, any parent, guardian or legal custodian of the juvenile and counsel at least 3 days before the hearing. The court may rely on facts stated in the report in making its findings with respect to the criteria under sub. (5).

All of the following apply at a waiver hearing under this section:

(a) The juvenile shall be represented by counsel. Written notice of the time, place and purpose of the hearing shall be given to the juvenile, any parent, guardian or legal custodian, and counsel at least 3 days prior to the hearing. The notice shall contain a statement of the requirements of s. 938.29 (2) with regard to substitution of the judge. If parents entitled to notice have the same address, notice to one constitutes notice to the other. Counsel for the juvenile shall have access to the social records and other reports under s. 938.293.

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

(c) The juvenile does not have the right to a jury.

The court shall determine whether the matter has prosecutive merit before proceeding to determine if it should waive jurisdiction. If the court determines that the matter does not have prosecutive merit, the court shall deny the petition for waiver.

If a petition for waiver of jurisdiction is contested, the district attorney shall present relevant testimony and other evidence, shall base his decision whether to waive jurisdiction on the criteria specified in sub. (5).

If a petition for waiver of jurisdiction is uncontested, the court shall inquire into the capacity of the juvenile to knowingly, intelligently and voluntarily decide not to contest the waiver of jurisdiction. If the court is satisfied that the decision not to contest the waiver of jurisdiction is knowingly, intelligently and voluntarily made, no testimony need be taken and the court, after considering the petition for waiver of jurisdiction and other relevant evidence before the court, shall base its decision whether to waive jurisdiction on the criteria specified in sub. (5).

If prosecutive merit is found, the court shall base its decision whether to waive jurisdiction on the following criteria:

(a) The personality of the juvenile, including whether the juvenile has a mental illness or developmental disability, the juvenile's physical and mental health, and the juvenile's pattern of living, prior treatment history, and apparent potential for responding to future treatment.

(b) The juvenile has been previously convicted following a waiver of the court's jurisdiction or has been previously found delinquent, whether such conviction or delinquency involved the infliction of serious bodily injury, the juvenile's motives and attitudes, and the juvenile's prior offenses.

(c) The adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system, and, where applicable, the medical health system and the suitability of the juvenile for placement in the serious juvenile delinquency program under s. 938.538 or the adult intensive sanctions program under s. 301.048.

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

The court shall state its finding with respect to the criteria on the record, and, if the court determines on the record that there is clear and convincing evidence that it is contrary to the best interests of the juvenile or of the public to hear the case, the court shall enter an order waiving jurisdiction and referring the matter to the district attorney for appropriate proceedings in the court of criminal jurisdiction. If the order of the court of criminal jurisdiction has exclusive jurisdiction.

If the juvenile absconds and does not appear at the waiver hearing, the court may proceed with the waiver hearing as provided in sub. (4) to (6) in the juvenile's absence.

If the waiver is granted, the juvenile may contest that waiver when the juvenile is apprehended by showing the court of criminal jurisdiction good cause for his or her failure to appear. If the court of criminal jurisdiction finds good cause for the juvenile's failure to appear, the court shall transfer jurisdiction to the court assigned to exercise jurisdiction under this chapter and chapter 48 for the purpose of holding the waiver hearing.

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

If waiver is granted, the juvenile is alleged to have violated s. 940.03, 940.06, 940.225 (1) or (2), 940.305, 940.31, 943.10 (2), 943.32 (2), 943.87 or 961.41 (1) on or after the juvenile's 15th birthday.

If the court determines that the matter does not have prosecutive merit before proceeding to determine if it should waive jurisdiction. If the court determines that the matter does not have prosecutive merit, the court shall deny the petition for waiver.

The state may not delay charging a child in order to avoid juvenile court jurisdiction. Even though a juvenile does not contest waiver, sub. (5) requires the state to present testimony on the issue of waiver. The determination of prosecutive merit under sub. (4) is discussed. An involuntary confession, if reliable and trustworthy, may be used to determine prosecutive merit; it would not be admissible at trial. If a juvenile does not meet the burden of showing unreliability of the confession, no evidentiary hearing is required.

Even though a juvenile does not contest waiver, sub. (5) requires the state to present testimony on the issue of waiver. The determination of prosecutive merit under sub. (4) is discussed. An involuntary confession, if reliable and trustworthy, may be used to determine prosecutive merit; it would not be admissible at trial. If a juvenile does not meet the burden of showing unreliability of the confession, no evidentiary hearing is required.

In Interest of T.R.B. 109 Wis. 2d 179, 325 N.W.2d 495 (1982).

In Interest of D.E.D. 101 Wis. 2d 193, 304 N.W.2d 133 (Cl. App. 1981).

In Interest of J.G. 119 Wis. 2d 748, 350 N.W.2d 668 (1984).

In certain contested cases, the state may establish prosecutive merit on the basis of reliable information provided in delinquency and waiver petitions alone. In Interest of P.A.K. 119 Wis. 2d 871, 350 N.W.2d 677 (1984).
The trial court did not abuse its discretion in declining to convene in camera proceedings to determine whether the state had complied with discovery orders. In Interest of G.B.K. 126 Wis. 2d 253, 376 N.W.2d 385 (Ct. App. 1985).

A waiver petition under sub. (2) that referred only to facts of the underlying charge and not to facts to be presented under sub. (5) was insufficient. In Interest of J.V.R. 127 Wis. 2d 192, 378 N.W.2d 206 (Ct. App. 1987).

The court may consider a waiver investigation report containing information not included in a waiver petition. In Interest of S.N. 139 Wis. 2d 270, 407 N.W.2d 562 (Ct. App. 1987).

A juvenile court improperly denied a waiver based on the belief that the adult court would improperly sentence the juvenile. In Interest of C.W. 142 Wis. 2d 763, 419 N.W.2d 670 (Ct. App. 1987).

If the state shows that delay in charging an offense committed by an adult defendant while still a juvenile was not with manipulative intent, due process does not require dismissal. State v. Montgomery, 148 Wis. 2d 593, 436 N.W.2d 303 (1989).

Sub. (9) permits the state to charge an offense related to a homicide after waiver under sub. (1) (i) is completed. State v. Karow, 154 Wis. 2d 375, 453 N.W.2d 181 (Ct. App. 1990).

By pleading guilty to criminal charges, a defendant waives the right to challenge a waiver proceeding. State v. Kraemer, 156 Wis. 2d 761, 475 N.W.2d 562 (Ct. App. 1991).

When a juvenile turns 18 during the pendency of proceedings, the filing of a waiver petition under s. 48.18 prior to a plea hearing is not required for waiver of jurisdiction under s. 48.18 (2). Interest of K.A.P. 159 Wis. 2d 384, 464 N.W.2d 106 (Ct. App. 1990).

Delinquency and waiver petitions must both be filed to bring about a waiver hearing. There may not proceed with a waiver hearing if the time limits under s. 48.25 for a delinquency petition are not complied with. In Interest of Michael J.L. 174 Wis. 2d 688, 496 N.W.2d 758 (Ct. App. 1993).

A hearing to determine whether the state improperly delayed filing criminal charges to avoid juvenile jurisdiction addresses a potential constitutional violation, not the state's subject matter jurisdiction, and a waiver if not requested prior to the entry of a guilty plea. State v. Schroeder, 224 Wis. 2d 706, 593 N.W.2d 76 (Ct. App. 1999), 98−1420.

The department has exclusive authority to detain and release a child who has violated conditions of probation imposed by a court of criminal jurisdiction. A child can be held in an adult section of a county jail. 72 Att'y. Gen. 104.

A person who commits a crime while under age 18, but is charged after attaining age of 18, is not constitutionally entitled to juvenile jurisdiction where delay in filing the charges was not the result of a deliberate effort to avoid juvenile jurisdiction or of prosecutorial negligence. Bendler v. Percy, 481 F. Supp. 813 (1979).


Wisconsin's new juvenile waiver statute: when should we wave goodbye to juvenile court proceedings? 1979 WLR 190.

NOTE: The above annotations cite to s. 48.18, the predecessor statute to s. 938.18.

Sub. (2) (2) allows waiver into adult court in certain cases although the conditions of sub. (1) (i) are not met. It has been accomplished because of or some unlawful action by the person, waiver into adult court is appropriate. Interest of Pablo R. 2001 Wis App 242, 239 Wis. 2d 479, 620 N.W.2d 425, 00−0697.

After the filing of a criminal complaint and the criminal court's assumption of jurisdiction, so long as the criminal court retains jurisdiction the court may reconsider its waiver order under sub. (6). The juvenile retains jurisdiction and may reconsider its waiver order until a criminal complaint is filed. A juvenile may seek review of a waiver order after commencement of proceedings by seeking an interlocutory appeal or by filing a motion asking the criminal court to reinstitue jurisdiction. State v. Varin M. 2002 WI App 137, 647 N.W.2d 208, 01−0656.

938.183 Original adult court jurisdiction for criminal proceedings. (1) JUVENILES UNDER ADULT COURT JURISDICTION. Notwithstanding ss. 938.12 (1) and 938.18, courts of criminal jurisdiction have exclusive original jurisdiction over all of the following:

(a) A juvenile who has been adjudicated delinquent and who is alleged to have violated s. 940.20 (1) or 946.43 while placed in a juvenile correctional facility, a juvenile detention facility, or a secured residential care center for children and youth or who has been adjudicated delinquent and who is alleged to have committed a violation of s. 940.20 (2m).

(am) A juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile's 10th birthday.

(ar) A juvenile specified in par. (a) or (am) who is alleged to have attempted or committed a violation of any state criminal law in addition to the violation alleged under par. (a) or (am) if the violation alleged under this paragraph and the violation alleged under par. (a) or (am) may be joined under s. 971.12 (1).

(b) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation following waiver of jurisdiction under s. 48.18, 1993 stats., or s. 938.18 by the court assigned to exercise jurisdiction under this chapter and ch. 48 or if the court assigned to exercise jurisdiction under this chapter and ch. 48 has waived its jurisdiction over the juvenile for a previous violation and criminal proceedings on that previous violation are still pending.

(c) A juvenile who is alleged to have violated any state criminal law if the juvenile has been convicted of a previous violation over which the court of criminal jurisdiction had original jurisdiction under this section or if proceedings on a previous violation over which the court of criminal jurisdiction has original jurisdiction under this section are still pending.

(1m) CRIMINAL PENALTIES AND PROCEDURES. Notwithstanding subchs. IV to VI, a juvenile described in sub. (1) is subject to the procedures specified in chs. 967 to 979 and the criminal penalties for the crime that the juvenile is alleged to have committed except as follows:

(a) If the juvenile is under 15 years of age, the juvenile may be held in secure custody only in a juvenile detention facility or in the juvenile portion of a county jail.

(b) If a court of criminal jurisdiction transfers jurisdiction under s. 970.032 or 971.31 (13) to a court assigned to exercise jurisdiction under this chapter and ch. 48, the juvenile is subject to the procedures and dispositions specified in subch. IV to VI.

(c) If the juvenile is found to have committed a lesser offense than the offense alleged under s. 940.20 (1) (am), (ar) or (ar) or is found to have committed the offense alleged under sub. (1) (ar), but not the offense under sub. (1) (a) or (am) to which the offense alleged under sub. (1) (ar) is joined, and if any of the following conditions applies, the court of criminal jurisdiction shall, in lieu of convicting the juvenile, adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34:

1. Except as provided in subd. 3, the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is not a violation of a s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (a), that is not an attempt to violate s. 940.01 under the circumstances described in sub. (1) (am), that is a violation of s. 940.02 or 940.05 under the circumstances described in sub. (1) (am), and that is not an offense for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18.

2. Except as provided in subd. 3, the court of criminal jurisdiction finds that the juvenile has committed a lesser offense or a joined offense that is not a violation of a s. 940.20 (1) or (2m) or 946.43 under the circumstances described in sub. (1) (am), that is a violation of s. 940.01 under the circumstances described in sub. (1) (am), or is a violation for which the court assigned to exercise jurisdiction under this chapter and ch. 48 may waive its jurisdiction over the juvenile under s. 938.18 and the court of criminal jurisdiction, after considering the criteria specified in s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition specified in s. 938.34.

3. For a juvenile who is alleged to have attempted or committed a violation of s. 940.01 or to have committed a violation of s. 940.02 or 940.05 on or after the juvenile’s 15th birthday, the court of criminal jurisdiction finds that the juvenile has not attempted to commit a violation of s. 940.01 or committed a violation of s. 940.01, 940.02, or 940.05, and the court of criminal jurisdiction, after considering the criteria under s. 938.18 (5), determines that the juvenile has proved by clear and convincing evidence that it would be in the best interests of the juvenile and of the public to adjudge the juvenile to be delinquent and impose a disposition under s. 938.34.

(3) PLACEMENT IN STATE PRISON; PAROLE. When a juvenile who is subject to a criminal penalty under sub. (1m) or s. 938.183 (2), 2003 stats., attains the age of 17 years, the department may place the juvenile in a state prison named in s. 302.01, except that the
department may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1m). A juvenile who is subject to a criminal penalty under sub. (1m) or under s. 938.183 (2), 2003 stats., for an act committed before December 31, 1999, is eligible for parole under s. 304.06.

(4) **CHILD SUPPORT.** If the juvenile is placed outside the juvenile’s home under this section, the order shall contain a designation of the amount of support, if any, to be paid by the juvenile’s parent, guardian or custodian, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.


There is no constitutionally protected right that a juvenile’s name not be released prior to a reverse waiver hearing under s. 48.183 (now s. 98.183). State v. Hazen, 199 Wis. 2d 554, 543 N.W.2d 503 (Cl. App. 1995), 95−1379.

**938.185** **Venue.** (1) **PROCEEDINGS GENERALLY.** Subject to subs. (3) and (4), venue for any proceeding under ss. 938.12, 938.125, 938.13, 938.135, and 938.18 may be in any of the following:

(a) The county where the juvenile resides.

(b) The county where the juvenile is present.

(c) In the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred, except that in that case the court of the county where the violation occurred may, after the juvenile is adjudged delinquent, transfer the proceeding to the county where the juvenile resides for disposition, if the court of the county of residence agrees to that transfer.

(2) **REVISION AND EXTENSION OF ORDERS.** Venue for any proceeding under s. 938.363 or 938.365 shall be in the county where the dispositional order was issued, unless the juvenile’s county of residence has changed, or the parent of the juvenile has resided in a different county of this state for at least 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the juvenile or parent.

(3) **SEX OFFENDER REGISTRY VIOLATIONS.** Venue for a proceeding under s. 938.12 or 938.13 (12) based on an alleged violation of s. 301.45 (6) (a) or (ag) may be in the juvenile’s county of residence at the time the petition is filed. If the juvenile does not have a county of residence in this state at the time the petition is filed, or if the juvenile’s county of residence is unknown at the time the petition is filed, venue for the proceeding may be in any of the following counties:

(a) Any county in which the juvenile has resided while subject to s. 301.45.

(b) The county in which the juvenile was adjudicated delinquent or found not responsible by reason of mental disease or defect for the sex offense that requires the juvenile to register under s. 301.45.

(c) If the juvenile is required to register under s. 301.45 (1g) (dt), the county in which the juvenile was found to be a sexually violent person under ch. 980.

(d) If the juvenile is required to register only under s. 301.45 (1g) (f) or (g), any county in which the juvenile has been a student in this state or has been employed or carrying on a vocation in this state.

(4) **INDIAN JUVENILES.** Venue for a proceeding under s. 938.12 or 938.13 (12) based on an allegation that an Indian juvenile has committed a delinquent act may not be in the county specified in sub. (1) (a), unless that county is specified in sub. (1) (b) or (c), if all of the following circumstances apply:

(a) At the time of the alleged delinquent act the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile’s parent, or permanent guardianship.

(b) At the time of the alleged delinquent act the juvenile was physically outside the boundaries of the reservation of the Indian tribe of the tribal court and any off−reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under par. (a), including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off−reservation trust land.

(c) A petition relating to the delinquent act has been filed in a tribal court that has jurisdiction over the juvenile.

**History:** 1995 a. 77, 352, 440; 1999 a. 89; 2003 a. 284; 2005 a. 344; 2009 a. 94.


Venue becomes an issue only in the event that it is contested. It is not an element of the crime charged. The county where a juvenile “resides” is the county where the child is present at the time a petition is filed. State v. Corey J.G. 215 Wis. 2d 395, 572 N.W.2d 845 (1998), 96−3148.

**SUBCHAPTER IV**

**HOLDING A JUVENILE IN CUSTODY**

**938.19** **Taking a juvenile into custody.** (1) **CRITERIA.** A juvenile may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a court under s. 938.28.

(c) A court order if there is a showing that the welfare of the juvenile demands that the juvenile be immediately removed from his or her present custody. The order shall specify that the juvenile be held in custody under s. 938.207.

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

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

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

3. The juvenile is committing or has committed an act which is a violation of a state or federal criminal law.

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

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

6. The juvenile has violated a condition of court−ordered supervision or aftercare supervision administered by the department or a county department, a condition of the juvenile’s placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile’s participation in the intensive supervision program under s. 938.534.

7. The juvenile has violated the conditions of an order under s. 938.21 (4) or of an order for temporary physical custody issued by an intake worker.

8. The juvenile has violated a civil law or a local ordinance punishable by a forfeiture, except that in that case the juvenile shall be released immediately under s. 938.20 (2) (ag) or as soon as reasonably possible under s. 938.20 (2) (b) to (g).

10. The juvenile is absent from school without an acceptable excuse under s. 118.15.

(1m) **TRUANCY.** A juvenile who is absent from school without an acceptable excuse under s. 118.15 may be taken into custody by an individual designated under s. 118.16 (2m) (a) if the school attendance officer of the school district in which the juvenile resides, or the juvenile’s parent, guardian, or legal custodian, requests that the juvenile be taken into custody. The request shall specifically identify the juvenile.

(2) **NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN.** When a juvenile is taken into physical custody...
under this section, the person taking the juvenile into custody shall immediately attempt to notify the parent, guardian, legal custodian, and Indian custodian of the juvenile by the most practical means. The person taking the juvenile into custody shall continue such attempt until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified, or the juvenile is delivered to an intake worker under s. 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker before the parent, guardian, legal custodian, and Indian custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian, legal custodian, and Indian custodian of the juvenile are notified.

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

History: 1995 a. 77; 2001 a. 16; 2005 a. 344; 2009 a. 94.

A juvenile may not be taken into custody under sub. (1) (d) 8. for violating an ordinance that does not impose a forfeiture although a forfeiture may be imposed under s. 48.343 (2) [now s. 938.343]. In Interest of F.P., 164 Wis. 2d 10, 473 N.W.2d 546 (Ct. App. 1991).

NOTE: The above annotation cites to s. 48.19, the predecessor statute to s. 938.19.

938.195 Recording custodial interrogations. (1) DEFINITIONS. In this section:

(a) “Custodial interrogation” has the meaning given in s. 968.073 (1) (a).

(b) “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).

(c) “Place of detention” means a juvenile detention facility, jail, municipal lockup facility, or juvenile correctional facility, or a police or sheriff’s office or other building under the control of a law enforcement agency, at which juveniles are held in custody in connection with an investigation of a delinquent act.

(2) WHEN REQUIRED. (a) A law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(b) If feasible, a law enforcement agency shall make an audio or audio and visual recording of any custodial interrogation of a juvenile that is conducted at a place other than a place of detention unless a condition under s. 938.31 (3) (c) 1. to 5. applies.

(3) NOTICE NOT REQUIRED. A law enforcement officer or agent of a law enforcement agency conducting a custodial interrogation is not required to inform the subject of the interrogation that the officer or agent is making an audio or audio and visual recording of the interrogation.


938.20 Release or delivery from custody. (2) RELEASE OF JUVENILE. (ag) Except as provided in pars. (b) to (g), a person taking a juvenile into custody shall make every effort to release the juvenile immediately to the juvenile’s parent, guardian, legal custodian, or Indian custodian.

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

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

(cm) If the juvenile has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile’s placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile’s participation in the intensive supervision program under s. 938.534, the person who took the juvenile into custody may release the juvenile to the department or county department, whichever has supervision over the juvenile.

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

(e) If a juvenile is taken into custody under s. 938.19 (1) (d) 10., the law enforcement officer who took the juvenile into custody may release the juvenile under par. (ag) or (b) or, if the school board of the school district in which the juvenile resides has established a youth service center under s. 118.16 (4) (e), may deliver that juvenile to that youth service center. If the juvenile is delivered to a youth service center, personnel of the youth service center may release the juvenile to the juvenile’s parent, guardian or legal custodian, or release the juvenile to the school’s, after counseling the juvenile as may be appropriate. If the juvenile is released to the juvenile’s school, personnel of the youth service center shall immediately notify the juvenile’s parent, guardian and legal custodian that the juvenile was taken into custody under s. 938.19 (1) (d) 10. and released to the juvenile’s school.

(f) If a juvenile is taken into custody under s. 938.19 (1m), the person who took the juvenile into custody may release the juvenile under par. (ag), (b) or (e) or to the juvenile’s school administrator as defined in s. 125.09 (2) (a) 3., or a school employee designated by the school administrator. If a juvenile is released to a school administrator or the school administrator’s designee under this paragraph, the school administrator or designee shall do all of the following:

1. Immediately notify the juvenile’s parent, guardian or legal custodian that the juvenile was taken into custody under s. 938.19 (1m) and released to the school administrator or his or her designee.

2. Make a determination of whether the juvenile is a child at risk, as defined in s. 118.153 (1) (a), unless that determination has been made within the current school semester. If a juvenile is determined to be a child at risk under this subdivision, the school administrator shall provide a program for the juvenile according to the plan developed under s. 118.153 (2) (a).

3. Provide the juvenile and his or her parent or guardian with an opportunity for educational counseling to determine whether a change in the juvenile’s program or curriculum, including any of the modifications specified in s. 118.15 (1) (d), would resolve the juvenile’s truancy problem, unless the juvenile and his or her parent or guardian have been provided with an opportunity for educational counseling within the current school semester.

(g) If a juvenile is taken into custody under s. 938.19 (1) (d) 10. and is not released under par. (ag), (b) or (e) or if a juvenile is taken into custody under s. 938.19 (1m) and is not released under par. (ag), (b) or (f), the person who took the juvenile into custody shall release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.

(3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the person who took the juvenile into custody shall immediately notify the juvenile’s parent, guardian, legal custodian, and Indian custodian of the time and circumstances of the release and the person, if any, to whom the juvenile was released. If the juvenile is not released under sub. (2), the person who took the juvenile into custody shall arrange in a manner determined by the court and law enforcement agencies for the juvenile to be interviewed by the intake worker under s. 938.067 (2). The person who took the juvenile into custody shall make a statement in writing with supporting facts of the reasons why the juvenile was taken into physical custody and shall give a copy of the statement to the intake worker and to any juvenile 10 years of age or older. If the intake interview is not done in person, the report may be read to the intake worker.

(4) DELIVERY TO HOSPITAL OR PHYSICIAN. If the juvenile is believed to be suffering from a serious physical condition which

**2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?**
requires either prompt diagnosis or prompt treatment, the person taking the juvenile into physical custody, the intake worker or another appropriate person shall deliver the juvenile to a hospital as defined in s. 50.33 (2) (a) and (c) or physician’s office.

(5) EMERGENCY DETENTION OF JUVENILE. If the juvenile is believed to have a mental illness or developmental disability or to be drug dependent and exhibits conduct that constitutes a substantial probability of physical harm to the juvenile or to others, or a very substantial probability of physical impairment or injury to the juvenile exists due to the impaired judgment of the juvenile, and if the standards of s. 51.15 are met, the person taking the juvenile into physical custody, the intake worker, or other appropriate person shall proceed under s. 51.15.

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

(7) DUTIES OF INTAKE WORKER. (a) When a juvenile who is possibly involved in a delinquent act is interviewed by an intake worker, the intake worker shall inform the juvenile of his or her right to counsel and the right against self-incrimination.

(b) The intake worker shall review the need to hold the juvenile in custody and shall make every effort to release the juvenile from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the juvenile or to continue to hold the juvenile in custody on the criteria under s. 938.205 and criteria established under s. 938.06 (1) or (2).

(c) The intake worker may release the juvenile as follows:
1. To a parent, guardian, legal custodian, or Indian custodian, or to a responsible adult if the parent, guardian, legal custodian, or Indian custodian is unavailable, unwilling, or unable to provide supervision for the juvenile, counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15 years of age or older, without immediate adult supervision, counseling or warning the juvenile as may be appropriate.

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

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

(8) NOTIFICATION THAT HELD IN CUSTODY. (a) If a juvenile is held in custody, the intake worker shall notify the juvenile’s parent, guardian, legal custodian, and Indian custodian of the reasons for holding the juvenile in custody and of the juvenile’s whereabouts unless there is reason to believe that notice would present imminent danger to the juvenile. The parent, guardian, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 938.21, the nature and possible consequences of the hearing, the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b). If the parent, guardian, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible.

(b) If the juvenile is alleged to have committed a delinquent act, the juvenile shall receive the same notice about the detention hearing as the parent, guardian, or legal custodian. The intake worker shall notify both the juvenile and the juvenile’s parent, guardian, or legal custodian.

(c) If a juvenile who has violated a condition of aftercare supervision administered by the department or a county department, a condition of the juvenile’s placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth, or a condition of the juvenile’s participation in the intensive supervision program under s. 938.534 is held in custody, the intake worker shall also notify the department or county department, whichever has supervision over the juvenile, of the reasons for holding the juvenile in custody, of the juvenile’s whereabouts, and of the time and place of the detention hearing required under s. 938.21.


938.205 Criteria for holding a juvenile in physical custody. (1) CRITERIA. A juvenile may be held under s. 938.207, 938.208, or 938.209 (1) if the intake worker determines that there is probable cause to believe the juvenile is within the jurisdiction of the court and if probable cause exists to believe any of the following:

(a) That the juvenile will commit injury to the person or property of others if not held.

(b) That the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care and that services to ensure the juvenile’s safety and well-being are not available or would be inadequate.

(c) That the juvenile will run away or be taken away so as to be unavailable for proceedings of the court or its officers, proceedings of the division of hearings and appeals in the department of administration for revocation of aftercare supervision, or action by the department or county department relating to a violation of a condition of the juvenile’s placement in a Type 2 juvenile correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile’s participation in the intensive supervision program under s. 938.534.

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


938.207 Places where a juvenile may be held in nonsecure custody. (1) WHERE MAY BE HELD. A juvenile held in physical custody under s. 938.205 may be held in any of the following places:

(a) The home of a parent or guardian, except that a juvenile may not be held in the home of a parent or guardian if the parent or guardian 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 person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the custody decision shall consider the wishes of the juvenile in making that determination.

(b) The home of a relative, except that a juvenile may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the juvenile, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the juvenile. The person making the cus-
tody decision shall consider the wishes of the juvenile in making that determination.

(c) A licensed foster home if the placement does not violate the conditions of the license.

(cm) A licensed group home if the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative if the person has not had a license under s. 48.62 refused, revoked, or suspended within the previous 2 years. A placement under this paragraph may not exceed 30 days, unless the placement is extended by the court for cause for an additional 30 days.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician’s office if the juvenile is held under s. 938.20 (4).

(h) A place listed in s. 51.15 (2) if the juvenile is held under s. 938.20 (5).

(i) An approved public treatment facility for emergency treatment if the juvenile is held under s. 938.20 (6).

(k) A facility under s. 48.58.

(1g) INDIAN JUVENILE PLACEMENT PREFERENCES. An Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), (7) who is held in physical custody under s. 938.205 (1) shall be placed in compliance with s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the person responsible for determining the placement finds good cause, as described in s. 938.028 (6) (d), for departing from the order of placement preference under s. 938.028 (6) (a) or finds that emergency conditions necessitate departing from that order. When the reason for departing from that order is resolved, the Indian juvenile shall be placed in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b).

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

History: 1995 a. 77; 1999 a. 9; 2005 a. 344; 2009 a. 28, 94.

938.208 Criteria for holding a juvenile in a juvenile detention facility. A juvenile may be held in a juvenile detention facility if the intake worker determines that any of the following conditions applies:

(1) DELINQUENT ACT AND RISK OF HARM OR RUNNING AWAY. Probable cause exists to believe that the juvenile has committed a delinquent act or another act that presents a substantial risk of physical harm to another person or a substantial risk of running away so as to be unavailable for a court hearing, a revocation of aftercare supervision hearing, or action by the department or county department relating to a violation of a condition of the juvenile’s placement in a Type 2 correctional facility or a Type 2 residential care center for children and youth or a condition of the juvenile’s participation in the intensive supervision program under s. 938.534. For juveniles who have been adjudged delinquent, the delinquent act referred to in this section may be the act for which the juvenile was adjudged delinquent. If the intake worker determines that any of the following conditions applies, the juvenile is considered to present a substantial risk of physical harm to another person:

(a) Probable cause exists to believe that 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 (11), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2), if committed by an adult.

(b) Probable cause exists to believe that the juvenile 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.

(c) Probable cause exists to believe that 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.

(2) RUNAWAY FROM ANOTHER STATE OR SECURE CUSTODY. Probable cause exists to believe that the juvenile is a fugitive from another state or has run away from a juvenile correctional facility or a secured residential care center for children and youth and there has been no reasonable opportunity to return the juvenile.

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

(4) RUNAWAY FROM NONSECURE CUSTODY. Probable cause exists to believe that the juvenile, having been placed in nonsecure custody by an intake worker under s. 938.207 or by the court under s. 938.214, has run away or committed a delinquent act and no other suitable alternative exists.

(5) RUNAWAY FROM ANOTHER COUNTY. Probable cause exists to believe that the juvenile has been adjudged or alleged to be delinquent and has run away from another county and would run away from nonsecure custody pending his or her return. A juvenile may be held in secure custody under this subsection for no more than 24 hours after the end of the day that the decision to hold the juvenile was made unless an extension of those 24 hours is ordered by the court for good cause shown. Only one extension may be ordered.

(6) SUBJECT TO JURISDICTION OF ADULT COURT. Probable cause exists to believe that the juvenile is subject to the jurisdiction of the court of criminal jurisdiction under s. 938.183 (1) and is under 15 years of age.


938.209 Criteria for holding a juvenile in a county jail or a municipal lockup facility. (1) COUNTY JAIL. Subject to s. 938.208, a county jail may be used as a juvenile detention facility if the criteria under either par. (a) or (b) are met:

(a) There is no other juvenile detention facility approved by the department or a county which is available and all of the following conditions are met:

1. The jail meets the standards for juvenile detention facilities established by the department.
2. The juvenile is held in a room separated and removed from incarcerated adults.
3. The juvenile is not held in a cell designed for the administrative or disciplinary segregation of adults.
4. Adequate supervision is provided.
5. The court reviews the status of the juvenile every 3 days.

(b) The juvenile presents a substantial risk of physical harm to others in the juvenile detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The conditions of par. (a) 1. to 5. shall be met. The juvenile shall be given a hearing and may be transferred only upon a court order.

(2m) MUNICIPAL LOCKUP (a) A juvenile who is alleged to have committed a delinquent act may be held in a municipal lockup facility if all of the following criteria are met:

1. The department has approved the municipal lockup facility as a suitable place for holding juveniles in custody.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?*
2. The juvenile is held in the municipal lockup facility for not more than 6 hours while awaiting his or her hearing under s. 938.21 (1) (a).

3. There is sight and sound separation between the juvenile and any adult who is being held in the municipal lockup facility.

4. The juvenile is held for investigative purposes only.

(b) The department shall promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles in custody and for the operation of such a facility. The rules shall be designed to protect the health, safety and welfare of the juveniles held in those facilities.

(3) JUVENILES UNDER ADULT COURT JURISDICTION. The restrictions of this section do not apply to the use of jail for a juvenile who has been waived to adult court under s. 938.18 or who is under the jurisdiction of an adult court under s. 938.183, unless the juvenile is under the jurisdiction of an adult court under s. 938.183 (1) and is under 15 years of age.


938.21 Hearing for juvenile in custody. (1) HEARING, WHEN HELD. (a) If a juvenile who has been taken into custody is not released under s. 938.20, a hearing to determine whether to continue to hold the juvenile in custody under the criteria of ss. 938.205 to 938.209 (1) shall be conducted by the court within 24 hours after the end of the day on which the decision to hold the juvenile was made, excluding Saturdays, Sundays, and legal holidays.

By the time of the hearing a petition under s. 938.25 or a request for a change in placement under s. 938.357, a request for a revision of the dispositional order under s. 938.363, or a request for an extension of a dispositional order under s. 938.365 shall be filed, except that no petition or request need be filed if a juvenile is taken into custody under s. 938.19 (1) (b) or (d) 2., 6., or 7. or if the juvenile is a runaway from another state, in which case a written statement of the reasons for holding a juvenile in custody shall be substituted if the petition is not filed. If no hearing has been held within 24 hours or if no petition, request, or statement has been filed at the time of the hearing, the juvenile shall be released except as provided in par. (b). (b) The court shall grant a rehearing upon request of a parent not present at the hearing for good cause shown.

If no petition or request has been filed by the time of the hearing, a juvenile may be held in custody with the approval of the court for an additional 48 hours from the time of the hearing only if, as a result of the facts brought forth at the hearing, the court determines that probable cause exists to believe that the juvenile is an imminent danger to himself or herself or to others, or that probable cause exists to believe that the parent, guardian, or legal custodian of the juvenile or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care. The extension may be granted only once for any petition. If a petition or request is not filed within the 48-hour extension period under this paragraph, the court shall order the juvenile's immediate release from custody.

(2) PROCEEDINGS CONCERNING DELINQUENT JUVENILES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.12 or 938.13 (12) or (14) shall be conducted according to this subsection.

(a) A juvenile held in a nonsecure place of custody may waive in writing his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted upon the request of the juvenile or any other interested party for good cause shown. Any juvenile transferred to a juvenile detention facility shall thereafter have a rehearing under this section.

(b) A copy of the petition or request shall be given to the juvenile at or prior to the time of the hearing. Prior notice of the hearing shall be given to the juvenile’s parent, guardian, and legal custodian and to the juvenile under s. 938.20 (8).

(c) Prior to the commencement of the hearing, the court shall inform the juvenile of the allegations that have been or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the provisions of s. 938.18 if applicable, the right to counsel under s. 938.23 regardless of ability to pay if the juvenile is not yet represented by counsel, the right to remain silent, the fact that the silence may not be adversely considered by the court, the right to confront and cross-examine witnesses, and the right to present witnesses.

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

(e) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

(3) PROCEEDINGS CONCERNING JUVENILES IN NEED OF PROTECTION OR SERVICES. (ag) Proceedings concerning a juvenile who comes within the jurisdiction of the court under s. 938.13 (4), (6), (6m), or (7) shall be conducted according to this subsection.

(a) The parent, guardian, legal custodian, or Indian custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition or request shall be given to the parent, guardian, legal custodian, or Indian custodian, and to the juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice of the hearing shall be given to the juvenile’s parent, guardian, legal custodian, and Indian custodian and to the juvenile if he or she is 12 years of age or older under s. 938.20 (8).

(d) Prior to the commencement of the hearing, the court shall inform the parent, guardian, legal custodian, or Indian custodian of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to present, confront, and cross-examine witnesses and, in the case of a parent or Indian custodian of an Indian juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b).

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

(f) If present at the hearing, the parent shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile. If the parent does not provide that information at the hearing, the county department or agency primarily responsible for providing services to the juvenile under the custody order shall permit the parent to provide that information at a later date.

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

(4) ORDER TO CONTINUE IN CUSTODY. If the court finds that the juvenile should be continued in custody under the criteria of s. 938.205, the court shall enter one of the following orders:
   (a) Place the juvenile with a parent, guardian, legal custodian, or other responsible person and may impose reasonable restrictions on the juvenile’s travel, association with other persons, or places of abode during the period of placement, including a condition requiring the juvenile to return to other custody as requested; or subject the juvenile to the supervision of an agency agreeing to supervise the juvenile. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian, or other responsible person which may be necessary to ensure the safety of the juvenile.
   (b) Order the juvenile held in an appropriate manner under s. 938.207, 938.208 or 938.209 (1).

(4m) ELECTRONIC MONITORING. An order under sub. (4) (a) or (b) may include a condition that the juvenile be monitored by an electronic monitoring system.

(5) ORDERS IN WRITING. (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.
   (b) An order relating to a juvenile held in custody outside of his or her home shall also include all of the following:
      1. a. A finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.
      b. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.
      c. A finding as to whether the person who took the juvenile into custody and the intake worker have made reasonable efforts to make it possible for the juvenile to return safely home.
      d. If the juvenile is under the supervision of the county department, an order assigning the county department primary responsibility for providing services to the juvenile.
   1m. If for good cause shown sufficient information is not available for the court to make a finding as to whether reasonable efforts were made to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, a finding as to whether reasonable efforts were made to make it possible for the juvenile to return safely home and an order for the county department or agency primarily responsible for providing services to the juvenile under the custody order to file with the court sufficient information for the court to make a finding as to whether those reasonable efforts were made to prevent the removal of the juvenile from the home by no later than 5 days, excluding Saturdays, Sundays, and legal holidays, after the date on which the order is granted.
   2. If the juvenile is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the juvenile is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the juvenile.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, a finding as to whether the intake worker has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.
   (c) The court shall make the findings specified in par. (b) 1., 1m., and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1., 1m., or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.
   (d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.
   (c) 1. In this paragraph, “adult relative” means a grandparent, great-grandparent, aunt, uncle, brother, sister, half brother, or half sister of a juvenile, whether by blood, marriage, or legal adoption, who has attained 18 years of age.
   2. The court shall order the county department or agency primarily responsible for providing services to the juvenile under the custody order to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all relatives of the juvenile named under sub. (2) (e) or (3) (f) and to all adult relatives of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of the information specified in this subdivision to all other adult individuals named under sub. (2) (e) or (3) (f) within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (2) (e) or (3) (f) if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative. The notice shall include all of the following:
      a. A statement that the juvenile has been removed from the custody of the juvenile’s parent.
      b. A statement that explains the options that the person provided with the notice has under state or federal law to participate in the care and placement of the juvenile, including any options that may be lost by failing to respond to the notice.
      c. A description of the requirements to obtain a foster home license under s. 48.62 or to receive kinship care or long-term kinship care payments under s. 48.57 (3m) or (3n) and of the addi-
tional services and supports that are available for juveniles placed in a foster home or in the home of a person receiving those payments.

d. A statement advising the person provided with the notice that he or she may incur additional expenses if the juvenile is placed in his or her home and that reimbursement for some of those expenses may be available.

e. The name and contact information of the agency that removed the juvenile from the custody of the juvenile’s parent.

(6) AMENDMENT OF ORDER. An order under sub. (4) may be amended at any time, with notice, so as to place the juvenile in another form of custody for failure to conform to the conditions originally imposed. A juvenile may be transferred to secure custody if he or she meets the criteria of s. 938.208.

(7) DEFERRED PROSECUTION. If the court determines that the best interests of the juvenile and the public are served, the court may enter a consent decree under s. 938.32 or dismiss the petition and refer the matter to the intake worker for deferred prosecution in accordance with s. 938.245.


When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under sub. (7), the intake worker need not notify the district attorney and nothing triggers a district attorney’s authority to terminate the agreement under s. 938.245 (6). An order under sub. (7) dismissing a petition for deferred prosecution does not require district attorney consent.

Deferred prosecutions under sub. (7) are not limited to situations in which the child is in custody. State v. Lindsey A.F. 2003 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01-0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081 E.

Deferred prosecutions under sub. (7) are not limited to situations in which the child is in custody. State v. Lindsey A.F. 2003 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01-0081. Affirmed. 2003 WI 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01-0081.

938.22 County and private juvenile facilities.

(1) ESTABLISHMENT AND POLICIES. (a) Subject to s. 48.66 (1) (b), the county board of supervisors of a county may establish a juvenile detention facility in accordance with ss. 301.36 and 301.37 or the county boards of supervisors for 2 or more counties may jointly establish a juvenile detention facility in accordance with ss. 46.20, 301.36, and 301.37. The county board of supervisors of a county may establish a shelter care facility in accordance with ss. 48.576 and 48.578. The county board of supervisors of a county may establish a shelter care facility that may include a detention facility in accordance with ss. 46.20, 48.576, and 48.578. A private entity may establish a juvenile detention facility or shelter care facility in accordance with ss. 301.36 and 301.37 and contract with one or more county boards of supervisors under s. 938.222 to hold juveniles in the private juvenile detention facility.

(b) Subject to sub. (3) (ar), in counties having a population of less than 500,000, the nonjudicial operational policies of a public juvenile detention facility or shelter care facility shall be determined by the county board of supervisors or, in the case of a public juvenile detention facility or shelter care facility established by 2 or more counties, by the county boards of supervisors for 2 or more counties jointly. Those policies shall be executed by the superintendent appointed under sub. (3) (a).

(c) In counties having a population of 500,000 or more, the nonjudicial operational policies of a public juvenile detention facility and the detention section of the children’s court center shall be established by the county board of supervisors, and the policies shall be executed by the director of the children’s court center.

(d) The nonjudicial operational policies of a private juvenile detention facility shall be established by the private entity operating the juvenile detention facility. Those policies shall be executed by the superintendent appointed under sub. (3) (bm).

(2) PLANS AND REQUIREMENTS. (a) Counties shall submit plans for a juvenile detention facility or juvenile portion of the county jail to the department of corrections and submit plans for a shelter care facility to the department of children and families. A private entity that proposes to establish a juvenile detention facility shall submit plans for the facility to the department of corrections. The applicable department shall review the submitted plans. A county or a private entity may not implement a plan unless the applicable department has approved the plan. The department of corrections shall promulgate rules establishing minimum requirements for the approval and operation of juvenile detention facilities and the juvenile portion of county jails. The plans and rules shall be designed to protect the health, safety, and welfare of the juveniles placed in those facilities.

(b) If the department approves, a juvenile detention facility or a holdover room may be located in a public building in which there is a jail or other facility for the detention of adults if the juvenile detention facility or holdover room is physically segregated from the jail or other facility so that juveniles may enter the juvenile detention facility or holdover room without passing through areas where adults are confined and juveniles detained in the juvenile detention facility or holdover room cannot communicate with or view adults confined in the jail or other facility.

(c) A shelter care facility shall be used for the temporary care of juveniles. A shelter care facility, other than a holdover room, may not be in the same building as a facility for the detention of adults.

(3) SUPERVISION OF FACILITY. (a) In counties having a population of less than 500,000, public juvenile detention facilities and public shelter care facilities shall be in the charge of a superintendent.

The county board of supervisors or, where 2 or more counties jointly operate public juvenile detention facilities or shelter care facilities, the county boards of supervisors for the 2 or more counties jointly shall appoint the superintendent and other necessary personnel for the care and education of the juveniles placed in those facilities, subject to par. (am) and to civil service regulations in counties having civil service.

(am) If a juvenile detention facility or holdover room is part of a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults may nominate persons for the position of superintendent of the juvenile detention facility or holdover room. Nominees under this paragraph shall have demonstrated administrative abilities and interest in juvenile justice and the welfare of juveniles.

(ar) Notwithstanding sub. (1) (b), if a juvenile detention facility or holdover room is located in a public building in which there is a jail or other facility for the detention of adults, the sheriff or other keeper of the jail or other facility for the detention of adults shall determine the security and emergency response policies of that juvenile detention facility or holdover room and the procedures for implementing those policies.

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

(bm) A private juvenile detention facility shall be in the charge of a superintendent appointed by the private entity operating the juvenile detention facility.

(c) A superintendent appointed under par. (a), (b), or (bm) after May 1, 1992, shall, within one year after that appointment, successfully complete an administrative training program approved or provided by the department of justice.

(5) COUNTY CONTRACTS WITH PRIVATE FACILITIES. A county board of supervisors, or 2 or more county boards of supervisors jointly, may contract with privately operated juvenile detention facilities, shelter care facilities, or home detention programs for purchase of services. A county board of supervisors may delegate this authority to its county department.
(7) LICENSING OF SHELTER CARE FACILITIES. (a) No person may establish a shelter care facility without first obtaining a license under s. 48.66 (1) (a). To obtain a license under s. 48.66 (1) (a) to operate a shelter care facility, a person must meet the minimum requirements for a license established by the department of children and families under s. 48.67, meet the requirements specified in s. 48.685, and pay the license fee under par. (b). A license issued under s. 48.66 (1) (a) to operate a shelter care facility is valid until revoked or suspended, but shall be renewed every 2 years as provided in s. 48.66 (5).

(b) Except as provided in par. (d), before the department of children and families may issue a license under s. 48.66 (1) (a) to operate a shelter care facility, the shelter care facility shall pay to that department a biennial fee of $60.50, plus a biennial fee of $18.15 per juvenile, based on the number of juveniles that the shelter care facility is licensed to serve. A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) shall pay the fee by the continuation date of the license. A new shelter care facility shall pay the fee by no later than 30 days before the opening of the shelter care facility.

NOTE: Par. (b) is created by 2011 Wis. Act 209. Prior to 7−1−12 it reads:

(b) Before the department of children and families may issue a license under s. 48.66 (1) (a) to operate a shelter care facility, the shelter care facility shall pay to that department a biennial fee of $60.50, plus a biennial fee of $18.15 per juvenile, based on the number of juveniles that the shelter care facility is licensed to serve. A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) shall pay the fee by the continuation date of the license. A new shelter care facility shall pay the fee by no later than 30 days before the opening of the shelter care facility.

(c) A shelter care facility that wishes to continue a license issued under s. 48.66 (1) (a) and that fails to pay the fee under par. (b) by the continuation date of the license or a new shelter care facility that fails to pay the fee under par. (b) by 30 days before the opening of the shelter care facility shall pay an additional fee of $5 per day for every day after the deadline that the facility fails to pay the fee.

(d) An individual who is eligible for a fee waiver under the veteran's fee waiver program under s. 45.44 is not required to pay the fee under par. (b) for a license to operate a shelter care facility.

NOTE: Par. (d) is created eff. 7−1−12 by 2011 Wis. Act 209. History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 352; 1997 a. 27, 35, 252; 1999 a. 9; 2005 a. 344; 2007 a. 20; 2009 a. 209.

938.222 Contracts with private entities for juvenile detention facility services. (1) USES OF FACILITIES. The county board of supervisors of any county may contract with one or more counties in Minnesota that operate a juvenile detention facility for the use of one or more Minnesota juvenile detention facilities for the holding of juveniles who meet the criteria under s. 48.208, 938.17 (1), 938.183 (1m) (a), or 938.208 or who are subject to a disposition under s. 938.17 (1) (b) or 938.34 (3) (f), a sanction under s. 938.355 (6) (d) 1., or short-term detention under s. 938.355 (6d) or 938.534 (1).

(2) CONTRACT REQUIREMENTS. (a) A contract under sub. (1) shall require all of the following:

1. That the Minnesota juvenile detention facility meet or exceed the minimum requirements for the approval and operation of a Wisconsin juvenile detention facility established by the department by rule under s. 938.22 (2) (a) and that the Minnesota juvenile detention facility be approved by the department under s. 301.36.

2. That the Minnesota juvenile detention facility provide educational programming, health care, and other care that is equivalent to that which a juvenile would receive in a Wisconsin juvenile detention facility.

(b) In addition to the requirements under par. (a), a contract under sub. (1) shall include all of the following:

1. The rates to be paid by the Wisconsin county for holding a juvenile in the Minnesota juvenile detention facility and the charges to be paid by the Wisconsin county for any extraordinary medical and dental expenses and any programming provided for a juvenile who is held in the Minnesota juvenile detention facility.

938.224 Contracts with department for juvenile detention facility services. (1) USES OF FACILITIES. The county board of supervisors of a county that operates a juvenile detention facility may contract with one or more counties in Minnesota for the use of the juvenile detention facility operated by the department for the holding of juveniles transferred to that juvenile detention facility by the Minnesota county.

(2) CONTRACT REQUIREMENTS. A contract under sub. (1) shall require all of the following:

1. 2009−10 Wis. Stats. database current through 2011 Wis. Act 219. except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
(a) That the county may use a juvenile correctional facility for holding a juvenile under sub. (1) only if any of the following criteria are met:
   1. There is no county−operated juvenile detention facility approved by the department within 40 miles of the county seat of the county.
   2. There is no bed space available in a county−operated juvenile detention facility approved by the department within 40 miles of the county seat of the county.
   3. That the county may use a juvenile correctional facility for holding a juvenile under sub. (1) only if the department approves that use based on the availability of beds in the juvenile correctional facility and on the programming needs of the juvenile.

(3) ADDITIONAL REQUIREMENTS. In addition to the requirements under sub. (2), a contract under sub. (1) shall include all of the following:
   (a) The per person daily rate to be paid by the county for holding a juvenile under sub. (1) and the charges to be paid by the county for any extraordinary medical and dental expenses and any programming provided for the juvenile by the department.
   (b) Any other matters that are necessary and appropriate concerning the obligations, responsibilities and rights of the contracting county and the department.

(4) SUPERVISION AND CONTROL OF JUVENILES. A juvenile held in custody under sub. (1) is under the supervision and control of the department and is subject to the rules and discipline of the department.


938.225 Statewide plan for juvenile detention facilities. The department shall assist counties in establishing juvenile detention facilities under s. 938.22 by developing and promulgating a statewide plan for the establishment and maintenance of suitable juvenile detention facilities reasonably accessible to each court.


938.23 Right to counsel. (1g) DEFINITION. In this section, “counsel” means an attorney acting as adversary counsel.

(1) DUTIES OF COUNSEL. Counsel shall advance and protect the legal rights of the party represented. Counsel may not act as guardian ad litem for any party in the same proceeding.

(1m) RIGHT OF JUVENILES TO LEGAL REPRESENTATION. Juveniles subject to proceedings under this chapter shall be afforded legal representation as follows:
   (a) A juvenile alleged to be delinquent under s. 938.12 or held in a juvenile detention facility shall be represented by counsel at all stages of the proceedings. A juvenile 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver. If the waiver is accepted, the court may not place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, transfer supervision of the juvenile to the department for participation in the serious juvenile offender program, or transfer jurisdiction over the juvenile to adult court.
   (am) A juvenile subject to a sanction under s. 938.355 (6) (a) is entitled to representation by counsel at the hearing under s. 938.355 (6) (c).
   (ar) A juvenile subject to proceedings under s. 938.357 (3) or (5) shall be afforded legal representation as provided in those sections.

(b) 1. If a juvenile is alleged to be in need of protection or services under s. 938.13, the juvenile may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a juvenile 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.
   2. If the petition is contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the fact−finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the juvenile outside his or her home unless the juvenile is represented by counsel at the hearing at which the placement is made. For a juvenile under 12 years of age, the court may appoint a guardian ad litem instead of counsel.

(2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL. Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from the home of his or her parent or Indian custodian or the placement of the Indian juvenile in an out−of−home care placement, the Indian juvenile’s parent or Indian custodian shall have the right to be represented by counsel as provided in sub. (4).

(4) PROVIDING COUNSEL. If a juvenile has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the juvenile to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. In any situation under sub. (2g) in which a parent 18 years of age or over is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a parent has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the parent’s ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the juvenile who is named as the respondent in that petition.

(5) COUNSEL OF OWN CHOOSING. Notwithstanding subs. (3) and (4), any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

History: 1995 a. 77; 1999 a. 9; 2001 a. 103; 2005 a. 344; 2009 a. 94.

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D.(S), 168 Wis. 2d 996, 485 N.W.2d 52 (1992).

938.235 Guardian ad litem. (1) APPOINTMENT. (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.
   (c) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any juvenile alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the juvenile to be placed out of his or her home under s. 938.345 or 938.357.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel in a proceeding on behalf of any party or who is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

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

(b) In addition to any other duties and responsibilities of a guardian ad litem, a guardian ad litem appointed for a juvenile who is the subject of a proceeding under s. 938.13 shall do all of the following:

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

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

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

1. Participate in permanency planning under ss. 48.43 (5) and 938.38.

2. Petition for a change in placement under s. 938.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14 or 938.14.

4. Petition for revision of dispositional orders under s. 938.363.

5. Petition for extension of dispositional orders under s. 938.365.

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

7. Petition for relief from a judgment terminating parental rights under s. 48.028 or 48.46.

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

7m. Bring an action or motion for the determination of the juvenile's paternity under s. 767.80.

8. Perform any other duties consistent with this chapter and ch. 48.

(b) The court shall order the agency identified under s. 938.33 (1) (c) as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

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

(8) COMPENSATION. (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) The court may order either or both of the parents of a juvenile for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. Upon motion by the guardian ad litem, the court may order either or both of the parents of the juvenile to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both of the parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a juvenile under this chapter, the court may order a parent of the juvenile to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b).

(d) If the court orders a parent to reimburse a county under par. (b), the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent who is responsible for the reimbursement.

(e) The court may enforce its orders under this subsection by means of its contempt powers.


938.237 Civil law and ordinance proceedings initiated by citation in the court assigned to exercise jurisdiction under this chapter and ch. 48. (1) CITATION FORM. The citation forms under s. 23.54, 66.0113, 778.25, 778.26 or 800.02 may be used to commence an action for a violation of civil laws and ordinances in the court.

(2) PROCEDURES. The procedures for issuance and filing of a citation, and for forfeitures, stipulations, and deposits in ss. 23.50 to 23.67, 23.75 (3) and (4), 66.0113, 778.25, 778.26, and 800.01 to 800.035 except s. 800.035 (7) (b), when the citation is issued by a law enforcement officer, shall be used as appropriate, except that this chapter shall, in such cases, be superseded, unless otherwise provided in the citation, s. 379.37 shall govern court costs, fees, and surcharges imposed under ch. 814, and a capias shall be substituted for an arrest warrant. Sections 66.0113 (3) (c) and (d), 66.0114 (1), and 778.10 as they relate to collection of forfeiture orders shall not apply.

(3) DISPOSITION. If a juvenile to whom a citation has been issued does not submit a stipulation and deposit, the juvenile shall appear in the court for a plea hearing under s. 938.30 at the date, time and place for the court appearance specified in the citation. If the juvenile does not submit a stipulation and deposit or if the court refuses to accept a deposit unaccompanied by a stipulation, the juvenile may be summoned to appear and the procedures that govern petitions for civil law or ordinance violations under s. 938.125 shall govern all proceedings initiated by a citation, except that the citation shall not be referred to the court intake worker for an intake inquiry. If the court finds that a juvenile violated a municipal ordinance or a civil law punishable by a forfeiture under this section, the court shall enter a dispositional order under s. 938.344, if applicable, or it if s. 938.344 does not apply, the court may enter any of the dispositional orders under s. 938.343.

938.24 Receipt of jurisdictional information; intake inquiry. (1) Referral of information to intake worker; inquiry. Except when a citation has been issued under s. 938.17 (2), information indicating that a juvenile should be referred to the court as delinquent, in need of protection or services, or in violation of a civil law or a county, town, or municipal ordinance shall be referred to an intake worker. The intake worker shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the juvenile and of the public with regard to any action to be taken.

(1m) Counseling. As part of the intake inquiry, the intake worker shall inform the juvenile and the juvenile’s parent, guardian and legal custodian that they may request counseling from a person designated by the court to provide dispositional services under s. 938.069.

(2) Multidisciplinary screens; intake conferences. (a) As part of the intake inquiry the intake worker, after providing notice to the juvenile, parent, guardian, and legal custodian, may conduct multidisciplinary screens and intake conferences. If sub. (2m) applies and if the juvenile has not refused to participate under par. (b), the intake worker shall conduct a multidisciplinary screen under s. 938.547.

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

(2m) Multidisciplinary screen; pilot program. (a) In counties that have a pilot program under s. 938.547, a multidisciplinary screen shall be conducted for a juvenile who is or does any of the following:

1. Alleged to have committed a violation specified under ch. 961.

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

3. Alleged to have committed any offense that appears to the intake worker to be directly motivated by the juvenile’s need to purchase or otherwise obtain alcohol beverages, controlled substances, or controlled substance analogs.

4. Twelve years of age or older and requests and consents to a multidisciplinary screen.

5. Consents to a multidisciplinary screen requested by his or her parents.

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

(2r) Indian juvenile; notification of tribal court. (a) If the intake worker determines as a result of the intake inquiry that the juvenile is an Indian juvenile who has allegedly committed a delinquent act and that all of the following circumstances apply, the intake worker shall promptly notify the clerk of the tribal court under subd. 1., a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under those circumstances:

1. At the time of the delinquent act the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile’s parent, or permanent guardianship.

2. At the time of the delinquent act the juvenile was physically outside the boundaries of the reservation of the Indian tribe of the tribal court and any off–reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under subd. 1., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation and off–reservation trust land.

(b) If the intake worker is notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed in tribal court, the intake worker shall consult with tribal officials, unless the intake worker determines under sub. (4) that the case should be closed. After the consultation, the intake worker shall determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker shall close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

(3) Request for petition. If the intake worker determines as a result of the intake inquiry that the juvenile should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 938.09 file a petition.

(4) Deferred prosecution agreement or case closure. If the intake worker determines as a result of the intake inquiry that the case should be subject to a deferred prosecution agreement, or should be closed, the intake worker shall so proceed. If a petition has been filed, a deferred prosecution agreement may not be entered into or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 938.09, or is dismissed by the court.

(5) Request for petition, deferred prosecution, or case closure; time periods. The intake worker shall request that a petition be filed, enter into a deferred prosecution agreement, or close the case within 40 days after receipt of referral information. Before entering into a deferred prosecution agreement, the intake worker shall comply with s. 938.245 (1m), if applicable. If the case is closed or a deferred prosecution agreement is entered into, the district attorney, corporation counsel, or other official under s. 938.09 shall receive written notice of that action. If the case is closed, the known victims of the juvenile’s alleged act shall receive notice as provided under sub. (5m), if applicable. A notice of deferred prosecution of an alleged delinquency case shall include a summary of the facts surrounding the allegation and a list of the juvenile’s prior intake referrals and dispositions. If a law enforcement officer has made a recommendation concerning the juvenile, the intake worker shall forward the recommendation to the district attorney under s. 938.09. Notwithstanding the requirements of this section, the district attorney may initiate a delinquency petition under s. 938.25 within 20 days after notice that the case has been closed or that a deferred prosecution agreement has been entered into. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not referred or filed within the time period specified in this subsection. Failure to object to the fact that a petition is not referred or filed within a time period specified in this subsection waives any challenge to the court’s competency to act on the petition.

(5m) Case closure; information to victims. If a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) and the intake worker decides to close the case, the intake worker shall make a reasonable attempt to inform all of the known victims of the juvenile’s act that the case is being closed at that time.

(6) Written policies. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).

(7) No intake inquiry or review for citations. If a citation is issued to a juvenile, the citation is not subject to an inquiry or a review by an intake worker for the purpose of recommending deferred prosecution.

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Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J.W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), “information indicating that a child should be referred to the court as delinquent” is that quantum of information that would allow a reasonable intake worker to make the appropriate disposition of the matter. In Interest of J.W. 159 Wis. 2d 754, 645 N.W.2d 520 (Ct. App. 1990).

Sub. (5), when read in conjunction with sub. (3), requires that an intake worker request the district attorney to file a delinquency petition and does not require the intake worker to make a recommendation that a petition be filed. Interest of Antonio M.C. 192 Wis. 2d 662, 531 N.W.2d 462 (Ct. App. 1994).


NOTE: The above annotations cite to s. 48.24, the predecessor statute to s. 938.24.

When a district attorney receives notice of a deferred prosecution agreement from an intake worker under sub. (5), the 20 days during which the district attorney may terminate the agreement under s. 938.245 (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney’s authority to terminate the agreement under s. 938.245 (6). An order under s. 938.21 (7) dismissing a petition and referring for deferred prosecution does not require district attorney consent. The district attorney may not override the order by filing a new petition with the same charges and facts. State v. Lindsey A.F. 2002 WI App 223, 257 Wis. 2d 650, 653 N.W.2d 116, 01−0081. Affirmed. 2003 Wis 63, 262 Wis. 2d 200, 663 N.W.2d 757, 01−0081.

938.243 Basic rights: duty of intake worker. (1) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS. Before conferring with the parent or juvenile during the intake inquiry, the intake worker shall personally inform a juvenile alleged to have committed a delinquent act, a juvenile 10 years of age or older who is the focus of an inquiry regarding the need for protection or services under s. 938.13 (4), (6), (6m), or (7), and the parents of those juveniles of all of the following:

(a) That the referral may result in a petition to the court.

(b) That the juvenile or parent, guardian, and legal custodian abide by such obligations, including supervision, curfews, and school attendance requirements, as the court deems necessary.

(c) That the referral may result in a petition to the court.

(d) That any charges or possible consequences of the proceedings including the provisions of ss. 938.17 and 938.18 if applicable.

(e) That the right to remain silent, the fact that in a delinquency proceeding the silence of the juvenile is not to be adversely considered by the court, and the fact that in a nondelinquency proceeding the silence of any party may be relevant in the proceeding.

(f) That the right to confront and cross−examine those appearing against them.

(g) That the right to counsel under s. 938.23.

(h) That the right to present and subpoena witnesses.

(i) That the right to have the allegations of the petition proved by clear and convincing evidence unless the juvenile is within the court’s jurisdiction under s. 938.12 or 938.13 (12), in which case the standard of proof is beyond a reasonable doubt.

(1m) DISCLOSURE OF INFORMATION FOR USE IN CIVIL DAMAGES ACTION. If the juvenile who is the subject of the intake inquiry is alleged to have committed an act that resulted in personal injury or damage to or loss of the property of another, the intake worker shall inform the juvenile’s parents in writing of all of the following:

(a) The possibility of disclosure of the identity of the juvenile and the parents, of the juvenile’s police records, and of the outcome of proceedings against the juvenile for use in civil actions for damages against the juvenile or the parents.

(b) The parents’ liability for acts of their juveniles.

(3) INFORMATION WHEN JUVENILE NOT AT INQUIRY OR HEARING. If the intake worker has not had a hearing under s. 938.21 and was not present at an intake conference under s. 938.24, the intake worker shall notify the juvenile, parent, guardian, and legal custodian as appropriate of their basic rights under this section. The notice shall be given verbally, either in person or by telephone, and in writing. The notice shall be given in sufficient time to allow the juvenile, parent, guardian, or legal custodian to prepare for the plea hearing. This subsection does not apply to cases of deferred prosecution under s. 938.245.

(4) APPLICABILITY. This section does not apply if the juvenile was present at a hearing under s. 938.21.

History: 1995 a. 77; 1997 a. 35; 2005 a. 344; 2009 a. 94.

938.245 Deferred prosecution. (1) WHEN AVAILABLE. An intake worker may enter into a written deferred prosecution agreement with all parties as provided in this section if all of the follow−ing apply:

(a) That the intake worker has determined that neither the interests of the juvenile nor of the public require filing of a petition for circumstances relating to s. 938.12, 938.125, 938.13, or 938.14.

(b) That the facts persuade the intake worker that the jurisdiction of the court, if sought, would be proper.

(c) That the juvenile, parent, guardian and legal custodian consent.

(1m) VICTIMS; RIGHT TO CONFER WITH INTAKE WORKER. If a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), an intake worker shall, as soon as practicable but before entering into a deferred prosecution agreement under sub. (1), offer all of the victims of the juvenile’s alleged act who have so requested an opportunity to confer with the intake worker concerning the proposed deferred prosecution agreement. The duty to offer an opportunity to confer under this subsection does not limit the obligation of the intake worker to perform his or her responsibilities under this section.

(2) CONTENTS OF AGREEMENT. (a) Specific conditions. A deferred prosecution agreement may provide for any one or more of the following:

1. ‘Counseling.’ That the juvenile and the juvenile’s parent, guardian or legal custodian participate in individual, family or group counseling and that the parent, guardian or legal custodian participate in parenting skills training.

2. ‘Compliance with obligations.’ That the juvenile and a parent, guardian, or legal custodian abide by such obligations, including supervision, curfews, and school attendance requirements, as the court deems necessary.

3. ‘Alcohol and other drug abuse assessment.’ That the juvenile submit to an alcohol and other drug abuse assessment that meets the criteria under s. 938.547 (4) and that is conducted by an approved treatment facility for an examination of the juvenile’s use of alcohol beverages, controlled substances, or controlled substance analogs and any medical, personal, family, or social effects caused by its use, if the multidisciplinary screen under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems related to the use of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, or social effects.

4. ‘Alcohol and other drug abuse treatment and education.’ That the juvenile participate in an alcohol and other drug abuse outpatient treatment program or a court−approved drug and alcohol treatment program, or an alcohol and other drug abuse education program, if an alcohol and other drug abuse assessment under subd. 3. recommends outpatient treatment, intervention, or education.

5. ‘Restitution.’ a. That the juvenile participate in a restitution project if the act for which the agreement is being entered into resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering. Subject to subd. 5. c., the agreement may require 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 intake worker, after taking into consideration the well−being and needs of the victim, considers it beneficial to the well−being and behavior of the juvenile. The agreement shall include a determination 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 agreement for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. Any recovery under this subd. 5. a. shall be reduced by the amount recovered for the same act under subd. 5. a.

am. That the parent who has custody, as defined in s. 895.035 (1), of the juvenile make reasonable restitution for any damage to the property of another, or for any actual physical injury to another.
excluding pain and suffering, resulting from the act for which the agreement is being entered into. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered under this subd. 5. am. for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed $5,000. Any order under this subd. 5. am. shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of the expiration of the agreement for the payment. Any recovery under this subd. 5. am. shall be reduced by the amount recovered for the same act under subd. 5. a.

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 resident may, for the purpose of making restitution, 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 to 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. An agreement under this subdivision may require a juvenile who is under 14 years of age to make not more than $250 in restitution or to perform not more than 40 total hours of services for the victim as total restitution.

6. ‘Supervised work program.’ That the juvenile participate in a supervised work program or other community service work in accordance with s. 938.34 (5g).

7. ‘Volunteers in probation.’ That the juvenile be placed with a volunteer in a probation program under conditions the intake worker determines are reasonable and appropriate, if the juvenile is alleged to have committed 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 volunteer in probation program established in the juvenile’s county of residence, and if the intake worker determines that volunteer supervision under that program will likely benefit the juvenile and the community. The conditions an intake worker may establish under this subdivision may include a request to a volunteer to be a role model for the juvenile, informal counseling, general monitoring, monitoring of the conditions established by the intake worker, or any combination of these functions, and any other deferred prosecution condition that the intake worker may establish under this paragraph.

8. ‘Teen court program.’ That the juvenile 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 intake worker 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 or a civil law or ordinance violation.

c. The juvenile admits to the intake worker, in the presence of the juvenile’s parent, guardian, or legal custodian, that the juvenile committed the alleged delinquent act or civil law or ordinance violation.

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 or civil law or ordinance violation.

9m. “Youth report center.” That the juvenile report to a youth report center after school, in the evening, on weekends, or other nonschool 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 program-

ming of the center. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) No out-of-home placement; term of agreement. A deferred prosecution agreement may not include any form of out-of-home placement and may not exceed one year.

(c) Alcohol or other drug abuse treatment; informed consent. If the deferred prosecution agreement provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the juvenile and the juvenile’s parent, guardian or legal custodian shall execute an informed-consent form that indicates that they are voluntarily and knowingly entering into a deferred prosecution agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2g) Graffiti violation. If the deferred prosecution agreement is based on an allegation that the juvenile violated s. 943.017 and the juvenile has attained 10 years of age, the agreement may require that the juvenile participate for not less than 10 hours nor more than 100 hours in a supervised work program under s. 938.34 (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.

(2v) Habitual truancy violation. If the deferred prosecution agreement is based on an allegation that the juvenile has violated a municipal ordinance enacted under s. 118.163 (2), the agreement may require that the juvenile’s parent, guardian, or legal custodian attend school with the juvenile.

(3) Obligations in writing. The obligations imposed under a deferred prosecution agreement and its effective date shall be set forth in writing. The intake worker shall provide a copy of the agreement and order to the juvenile, the juvenile’s parent, guardian, and legal custodian, and to any agency providing services under the agreement.

(4) Right to terminate or object to agreement. The intake worker shall inform the juvenile and the juvenile’s parent, guardian, and legal custodian in writing of their right to terminate the deferred prosecution agreement at any time or to object at any time to the fact or terms of the agreement. If there is an objection, the intake worker may alter the terms of the agreement or request the district attorney or corporation counsel to file a petition.

(5) Termination upon request. A deferred prosecution agreement may be terminated upon the request of the juvenile, parent, guardian, or legal custodian.

(6) Termination if delinquency petition filed. A deferred prosecution agreement arising out of an alleged delinquent act is terminated if the district attorney files a delinquency petition within 20 days after receipt of notice of the deferred prosecution agreement under s. 938.24 (5). If a petition is filed, statements made to the intake worker during the intake inquiry are inadmissible.

(7) Cancellation by intake worker. (a) If at any time during the period of a deferred prosecution agreement the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the agreement. Within 10 days after the agreement is cancelled, the intake worker shall notify the district attorney, corporation counsel, or other official under s. 938.09 of the cancellation and may request that a petition be filed. In delinquency cases, the district attorney may initiate a petition within 20 days after the date of the notice regardless of whether the intake worker has requested that a petition be filed. The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any petition that is not filed within the time period specified in this paragraph. Failure to object to the fact that a petition is not filed within the time period specified in this paragraph waives any challenge to the court’s competency to act on the petition.

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
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(b) In addition to the action taken under par. (a), if the intake worker cancels a deferred prosecution agreement based on a determination that the juvenile’s parent, guardian, or legal custodian is not meeting the obligations imposed under the agreement, the intake worker shall request the district attorney, corporation counsel, or other official under s. 938.09 to file a petition requesting the court to order the juvenile’s parent, guardian, or legal custodian to show good cause for not meeting the obligations. If a petition under this paragraph is filed and if the court finds prosecutive merit for the petition, the court shall grant an order directing the parent, guardian, or legal custodian to show good cause, at a time and place fixed by the court, for not meeting the obligations. If the parent, guardian or legal custodian does not show good cause that the court may impose a forfeiture not to exceed $1,000.

(8) WHEN OBLIGATIONS MET. If the obligations imposed under the deferred prosecution agreement are met, the intake worker shall so inform the juvenile and a parent, guardian, and legal custodian in writing. No petition may be filed or citation issued on the charges that brought about the agreement and the charges may not be the sole basis for a petition under s. 48.13, 48.133, 48.14, 938.13, or 938.14.

(9) WRITTEN POLICIES. The intake worker shall perform his or her responsibilities under this section under general written policies promulgated under s. 938.06 (1) or (2).


When a district attorney receives notice of a deferred prosecution agreement from an intake worker under s. 938.24 (5), the 20 days during which the district attorney may terminate the agreement under sub. (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney’s authority to terminate the agreement under sub. (6). An order under s. 938.21 (7) dismissing a petition and vacating the deferred prosecution agreement under sub. (6) begins. When a court orders a deferred prosecution agreement under s. 938.21 (7), the intake worker need not notify the district attorney and nothing triggers a district attorney’s authority to terminate the agreement under sub. (6). An order under s. 938.21 (7) dismissing a petition and vacating the deferred prosecution agreement under sub. (6) begins.

2009−10 Wis. Stats. database current through 2011 Wis. Act 219. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?


“Good cause” under sub. (2) (a) is defined. In Interest of F. E.W. 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988). Delinquency and waiver petitions must both be filed to bring about a waiver hearing; the trial court may not proceed with a waiver hearing when the time limits under

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938.255 Petition; form and content. (1) Title and contents. A petition initiating proceedings under this chapter, other than a petition initiating proceedings under s. 938.12, 938.125, or 938.13 (12), shall be entitled, “In the interest of (juvenile’s name), a person under the age of 18”. A petition initiating proceedings under s. 938.12, 938.125, or 938.13 (12) shall be entitled, “In the interest of (juvenile’s name), a person under the age of 17”. A petition initiating proceedings under this chapter shall specify all of the following:

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

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

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

(cm) If the petition is initiating proceedings under s. 938.13 (4), (6), (6m), or (7), whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile’s Indian custodian, if any, and Indian tribe, if known.

(cr) 1. If the petition is initiating proceedings under s. 938.12 or 938.13 (12) and all of the following circumstances apply, a statement to that effect:

a. The juvenile is an Indian juvenile.

b. At the time of the alleged delinquent act, the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile’s parent, or permanent guardianship.

c. At the time of the delinquent act the juvenile was physically outside the boundaries of the reservation of the Indian tribe of the tribal court and any off-reservation trust land of either that Indian tribe or a member of that Indian tribe as a direct consequence of a tribal court order under subd. 1. b., including a tribal court order placing the juvenile in the home of a relative of the juvenile when or after the date of the tribal court order resides physically outside the boundaries of a reservation and off-reservation trust land.

2. If the statement under subd. 1. is included in the petition and if the intake worker, district attorney, or corporation counsel has been notified by an official of the Indian tribe that a petition relating to the delinquent act has been or may be filed in tribal court with respect to the alleged delinquent act, a statement to that effect.

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

(e) If the juvenile is alleged to come within the provisions of s. 938.13 (4), (6), (6m), (7) or (14) or 938.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the juvenile is in need of supervision, services, care or rehabilitation.

(f) If the juvenile is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless any of the circumstances specified in s. 938.355 (2d) b. 1. to 4. applies, reliable and credible information showing that the person who took the juvenile into custody and the intake worker have made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, and to make it possible for the juvenile to return safely home.

(g) If the petitioner knows or has reason to know that the juvenile is an Indian juvenile, if the juvenile is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or (7), and if the juvenile has been removed from the home of his or her parent or Indian custodian, reliable and credible information showing that continued custody of the juvenile by the juvenile’s parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and reliable and credible information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. The petition shall set forth with specificity both the information required under this paragraph and the information required under par. (f).

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

(3) If certain information not stated. If the information required under sub. (1) (d) or (e) is not stated the petition shall be amended under s. 938.263 (2) or dismissed.

(4) Copy to juvenile, parents, and others. A copy of the petition shall be given to the juvenile and to the parents, guardian, legal custodian and physical custodian. If the juvenile is an Indian juvenile who is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or (7), and who has been removed from the home of his or her parent or Indian custodian, a copy of the petition shall also be given to the Indian juvenile’s Indian custodian and tribe.


938.13, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the parent, guardian and legal custodian of the juvenile to appear personally at any hearing involving the juvenile, and, if the court so orders, to bring the juvenile before the court at a time and place stated.

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

(3) NOTICE OF HEARINGS. (a) 1. The court shall notify, under s. 938.273, the juvenile, any parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, and any person specified in par. (b) or (d), if applicable, of all hearings involving the juvenile under this subchapter, except hearings on motions for which notice must be provided only to the juvenile and his or her counsel. If parents entitled to notice have the same place of residence, notice to one constitutes notice to the other. The first notice to any interested party, foster parent, or other physical custodian described in s. 48.62 (2) shall be in writing and may have a copy of the petition attached to it. Notices of subsequent hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the date and time notice was given and the person to whom he or she spoke.

1m. The court shall give a foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement prior to the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

2. Failure to give notice under subd. 1. to a foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 938.13 and if the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.805 (1), and any person who has been adjudged to be the father of the juvenile in a judicial proceeding unless the person’s parental rights have been terminated.

6. INTERSTATE COMPACT PROCEEDINGS; NOTICE AND SUMMONS. When a proceeding is initiated under s. 938.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court. If the juvenile who is the subject of the proceeding is in the care of a foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian notice and a right to be heard as provided in sub. (3) (a).

7. CITATIONS AS NOTICE. When a citation has been issued under s. 938.17 (2) and the juvenile’s parent, guardian and legal custodian have been notified of the citation, subs. (3) and (4) do not apply.

8. REIMBURSE LEGAL COUNSEL COSTS IN CERTAIN CASES: NOTICE. When a petition is filed under s. 938.12 or 938.13, the court shall notify, in writing, the juvenile’s parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the juvenile, as provided under s. 938.275 (2).


938.273 Service of summons or notice; expense. (1) METHODS OF SERVICE: CONTINUANCE. (a) Except as provided in pars. (ag), (ar), and (b), service of summons or notice required by s. 938.27 may be made by mailing a copy of the summons or notice to the person summoned or notified.

(ag) In a situation described in s. 938.27 (3) (d), service of summons or notice required by s. 938.27 to an Indian juvenile’s parent, Indian custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

(ar) Except as provided in par. (b), if the person, other than a person specified in s. 938.27 (4m), fails to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, and service shall be made personally by delivering to the person a copy of the summons or notice; except that if the court determines that it is impracticable to serve the summons or notice personally, the court may order service by certified mail addressed to the last-known address of the person.

(b) The court may refuse to grant a continuance when the juvenile is being held in secure custody, but if the court so refuses, the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known address of the person who failed to appear at the hearing.

(c) Personal service shall be made at least 72 hours before the hearing. Mailing shall be sent at least 7 days before the hearing, except as follows:

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
1. When the petition is filed under s. 938.13 and the person to be notified lives outside the state, the mail shall be sent at least 14 days before the hearing.

2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves an Indian juvenile who has been removed from the home of his or her parent or Indian custodian and the person to be notified is the Indian juvenile's parent, Indian custodian, or tribe, the mail shall be sent so that it is received by the person to be notified at least 14 days before the hearing or, if the identity or location of the person to be notified cannot be determined by the U.S. secretary of the interior at least 15 days before the hearing.

(2) BY WHOM MADE. Service of summons or notice required by this chapter may be made by any suitable person under the direction of the court. Notification of the victim or alleged victim of a juvenile’s act under s. 938.27 (4m) shall be made by the district attorney or corporation counsel.

(3) EXPENSES: CHARGE ON COUNTY. The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at any hearing or proceeding of any nature brought in any court of the state in which any matter relative to the case is pending or the circuit court to dismiss criminal charges without prejudice. Personal jurisdiction depends on compliance with the procedures in sub. (1). The state's assertion that proper documents had been mailed to various addresses and not returned and that the juvenile had actual notice did not establish personal jurisdiction, nor does personal jurisdiction attach when a delinquency petition is filed. State v. Aufderhaar, 2005 WI 108, 283 Wis. 2d 336, 700 N.W.2d 4, 03−2820.

938.275 Parents’ contribution to cost of custody, sanctions and court legal services. (1) LEGAL SERVICES. SANCTIONS: OR PLACEMENT. (a) If a juvenile is held in custody under ss. 938.20 to 938.21, the court shall order the parents of the juvenile to contribute to the expense of holding the juvenile in custody the proportion of the total amount which the court finds the parents are able to pay.

(b) If the court finds a juvenile to be delinquent under s. 938.12, in violation of a civil law or ordinance under s. 938.125 or in need of protection or services under s. 938.13, the court shall order the parents of the juvenile to contribute toward the expense of the juvenile services to the juvenile, including any placement under s. 938.34 (3) (f), the proportion of the total amount which the court finds the parents are able to pay.

(c) If the court imposes a sanction on a juvenile as specified in s. 938.355 (6g) (b) and orders a disposition under s. 938.34 or if the juvenile is placed in a detention facility or placed of nonsecure custody under s. 938.355 (6d) (a), (b), or (c) or 938.534 (1) (b) or (c), the court shall order the parents of the juvenile to contribute toward the total of the sanction, disposition or placement the proportion of the total amount which the court finds the parents are able to pay.

(2) LEGAL COUNSEL INDIGENCY. (a) If the state or a county provides legal counsel to a juvenile subject to a proceeding under s. 938.12 or 938.13, the court shall order the juvenile’s parent to reimburse the state or county under par. (b) or (c). The court may not order reimbursement if either of the following apply:

1. A parent is the complaining or petitioning party.

2. The court finds that the interests of the parent and the interests of the juvenile are substantially and directly adverse and that reimbursement would be unfair to the parent.

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

(c) If the county provides the juvenile with legal counsel and the court orders reimbursement under par. (a), the court shall make a determination of indigency or appoint the county department to make the determination. If the court or the county department finds that the parent is not indigent or is indigent in part, the court shall establish the amount of reimbursement and order the parent to pay it.

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

1. An indigency determination made under par. (b) or (c).

2. The amount of reimbursement ordered.

3. The court’s finding, under par. (a) 2., that the interests of the parent and the juvenile are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

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

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

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

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

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

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


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

NOTE: The above annotation citizes to s. 48.275, the predecessor statute to s. 938.275.

938.28 Failure to obey summons; capias. If any person summoned under this chapter fails without reasonable cause to appear, he or she may be proceeded against for contempt of court under ch. 785. If the summons cannot be served, if the parties served fail to respond to the summons, or if it appears to the court that the service will be ineffectual, a capias may be issued for the court personal jurisdiction. Interest of Jermaine T. F. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

NOTE: The above annotation citizes to s. 48.28, the predecessor statute to s. 938.28.

938.29 Substitution of judge. (1) REQUEST FOR SUBSTITUTION. Except as provided in sub. (1g), the juvenile, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution...
of the judge assigned to the proceeding. Immediately upon filing the written request, the juvenile shall mail or deliver a copy of the request to the judge named in the request. In a proceeding under s. 938.12 or 938.13 (12), only the juvenile may request a substitution of the judge. If the juvenile has the right to request a substitution of judge, the juvenile’s counsel or guardian ad litem may file the request. Not more than one written request may be filed in any one proceeding, and no single request may name more than one judge. This section does not apply to proceedings under s. 938.21.

(1g) When substitution request not permitted. The juvenile may not request the substitution of a judge in a proceeding under s. 938.12 or 938.13 (12), and the juvenile and the juvenile’s parent, guardian, or legal custodian may not request the substitution of a judge in a proceeding under s. 938.13 (4), (6), (6m), or (7), if any of the following apply:

(a) The judge assigned to the proceeding has entered a dispositional order with respect to the juvenile in a previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7), or (12), 1993 stats., s. 938.12, or 938.13 (4), (6), (6m), or (7), or (12).

(b) The juvenile or the juvenile’s parent, guardian, or legal custodian has requested the substitution of a judge in a previous proceeding under s. 48.12, 1993 stats., s. 48.13 (4), (6), (6m), (7), or (12), 1993 stats., s. 938.12 or 938.13 (4), (6), (6m), (7), or (12).

(1m) Assignment of new judge. When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. Except as provided in sub. (2), if the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days after receipt of the request for substitution, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form or for reassignment as necessary.

(2) Substitution of judge scheduled to conduct waiver hearing. If the request for substitution of a judge is made for the judge scheduled to conduct a waiver hearing under s. 938.18, the request shall be filed before the close of the working day preceding the day that the waiver hearing is scheduled. Except as provided in sub. (1g), the judge may allow an authorized party to make a request for substitution on the day of the waiver hearing. If the request for substitution is made subsequent to the waiver hearing, the judge who conducted the waiver hearing may also conduct the plea hearing.

History:
1995 a. 77, 352; 2005 a. 344. Section 801.58 (2) giving the chief judge authority to review a denial of a request for substitution applies when a juvenile’s request for substitution is denied. Mateo D.O. v. Circuit Court for Winnebago County, 2005 WI App 85, 280 Wis. 2d 575, 696 N.W.2d 275, 05−0220.

A juvenile’s request for judicial substitution, filed and signed by counsel, was in proper form where no requirement that the juvenile sign the substitution request. Mateo D.O. v. Circuit Court for Winnebago County, 2005 WI App 85, 280 Wis. 2d 575, 696 N.W.2d 275, 05−0220.

938.29 Discovery. (1) Law enforcement reports. Copies of all law enforcement officer reports, including the officer’s memorandum and witnesses’ statements, shall be made available upon request to counsel or guardian ad litem prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 938.09. The juvenile, through counsel or guardian ad litem, is the only party who shall have access to the reports in proceedings under s. 938.12, 938.125, or 938.13 (12). The identity of a confidential informant may be withheld under s. 905.10.

(2) Records relating to juvenile. All records relating to a juvenile which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party, upon demand and upon presentation of releases where necessary, at least 48 hours before the proceeding. Persons entitled to inspect the records may obtain copies with the permission of the custodian of the records or with the permission of the court. The court may instruct counsel not to disclose specified items in the materials to the juvenile or the parent if the court reasonably believes that the disclosure would be harmful to the interests of the juvenile. Section 971.23 shall be applicable in all delinquency proceedings under this chapter, except that the court shall establish the timetable for the disclosures required under s. 971.23 (1), (2m), (6), and (9).

(3) Audiovisual recording of oral statement. Upon request prior to the fact−finding hearing, the district attorney shall disclose to the juvenile, and to the juvenile’s counsel or guardian ad litem, the existence of any audiovisual recording of an oral statement of a child under s. 908.08 that is within the possession, custody, or control of the state and shall make reasonable arrangements for the requesting person to view the statement. If, after compliance with this subsection, the state obtains possession, custody, or control of the audiovisual recording of the oral statement, the district attorney shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the statement.


938.295 Physical, psychological, mental or developmental examination. (1) Examination or assessment of juvenile or parent. After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant a physical, psychological, mental, or developmental examination or an alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4), the court may order a juvenile within its jurisdiction to be examined by an outpatient by a physician or by another expert as the court deems necessary and desirable.

The court may also order an examination or alcohol and other drug abuse assessment that conforms to the criteria under s. 938.547 (4) of a parent, guardian, or legal custodian whose ability to care for a juvenile is at issue before the court.

(b) The court shall hear any objections by the juvenile and the juvenile’s parents, guardian, or legal custodian to the request under par. (a) for an examination or assessment before ordering the examination or assessment.

(c) The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 938.361.

(1e) Reasonable cause for assessment; when. Reasonable cause exists to warrant an alcohol and other drug abuse assessment under sub. (1) if any of the following apply:

(a) The multidisciplinary screen procedure conducted under s. 938.24 (2) indicates that the juvenile is at risk of having needs and problems related to alcohol or other drug abuse.

(b) The juvenile was adjudicated delinquent on the basis of an offense specified in ch. 961.

(c) The greater weight of the evidence at the fact−finding hearing indicates that any offense which formed the basis for the adjudication was motivated by the juvenile’s need to purchase or otherwise obtain alcohol beverages, controlled substances or controlled substance analogs.

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

(2) NOT COMPETENT OR NOT RESPONSIBLE. (a) If there is probable cause to believe that the juvenile has committed the alleged offense and if there is reason to doubt the juvenile’s competency to proceed, or upon entry of a plea under s. 938.30 (4) (c), the court shall order the juvenile to be examined by a psychiatrist or licensed psychologist. If the cost of the examination is approved by the court, the cost shall be paid by the county of the court ordering the examination, and the county may recover that cost from the juvenile’s parent or guardian as provided in par. (c). Examination shall be made on an outpatient basis unless the juvenile presents a substantial risk of physical harm to the juvenile or others; or the juvenile, parent, or guardian, and legal counsel or guardian ad litem, consent to an inpatient examination. An inpatient evaluation shall be completed in a specified period that is no longer than necessary.

(b) 1. The examiner shall file a report of the examination with the court in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel and to the juvenile’s counsel or guardian ad litem. The report shall describe the nature of the examination, identify the persons interviewed, the particular records reviewed, and any tests administered to the juvenile and state in reasonable detail the facts and reasoning upon which the examiner’s opinions are based.

2. If the examination is ordered following a plea under s. 938.30 (4) (c), the report shall also contain an opinion regarding whether the juvenile suffered from mental disease or defect at the time of the commission of the act alleged in the petition and, if so, whether this caused the juvenile to lack substantial capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law.

3. If the examination is ordered following a finding that there is probable cause to believe that the juvenile has committed the alleged offense and that there is reason to doubt the juvenile’s competency to proceed, the report shall also contain an opinion regarding the juvenile’s present mental capacity to understand the proceedings and assist in his or her defense and, if the examiner reports that the juvenile lacks competency to proceed, the examiner’s opinion regarding the likelihood that the juvenile, if provided treatment, may be restored to competency within the time specified in s. 938.30 (5) (e) 1.

(c) A county that pays the cost of an examination under par. (a) may recover a reasonable contribution toward that cost from the juvenile’s parent or guardian, based on the ability of the parent or guardian to pay. If the examination is provided or otherwise funded by the county department under s. 46.215, 46.22, or 46.23, the county department shall collect the contribution of the parent or guardian as provided in s. 301.03 (18). If the examination is provided or otherwise funded by the county department under s. 51.42 or 51.437, the county department shall collect the contribution of the parent or guardian as provided in s. 46.03 (18).

(3) OBJECTION TO A PARTICULAR PROFESSIONAL. If the juvenile or a parent objects to a particular physician, psychiatrist, licensed psychologist, or other expert, the court shall appoint a different physician, psychiatrist, psychologist or other expert.

(4) TELEPHONE OR LIVE AUDIOVISUAL PROCEEDING. Motions or objections under this section may be heard under s. 807.13.

History:

938.296 Testing for HIV infection and certain diseases.

(1) DEFINITIONS. In this section:

(a) “Health care professional” has the meaning given in s. 252.15 (1) (am).

(b) “HIV” has the meaning given in s. 252.01 (1m).

(bm) “HIV test” has the meaning given in s. 252.01 (2m).

(c) “Sexually transmitted disease” has the meaning given in s. 252.11 (1).

(d) “Significant exposure” has the meaning given in s. 252.15 (1) (em).

(e) “Victim” has the meaning given in s. 938.02 (20m) (a) 1.

(2) SEXUALLY TRANSMITTED DISEASE AND HIV TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 940.225, 948.02, 948.025, 948.05, 949.06, or 948.085 (2), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to an HIV test and a test or a series of tests to detect the presence of a sexually transmitted disease, each of which tests shall be administered by a health care professional, and to disclose the results of those tests as specified in sub. (4) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure.

(c) If the juvenile is adjudicated delinquent, is found to be in need of protection or services or is found not responsible by reason of mental disease or defect under s. 938.30 (5), this paragraph does not apply.

(2m) COMMUNICABLE DISEASE TESTING. In a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have violated s. 946.43 (2m), the district attorney or corporation counsel shall apply to the court for an order requiring the juvenile to submit to a test or a series of tests administered by a health care professional to detect the presence of communicable diseases and to disclose the results of the test or tests as specified in sub. (5) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the victim or alleged victim and involved the juvenile’s blood, semen, vomit, saliva, urine, feces, or other bodily substance.

(3) WHEN ORDER MAY BE SOUGHT. The district attorney or corporation counsel may apply for an order under sub. (2) or (2m) at any of the following times:

(a) At or after the plea hearing and before a dispositional order is entered.

(b) At any time after the juvenile is adjudicated delinquent or found to be in need of protection or services.

(c) At any time after the juvenile is found not responsible by reason of mental disease or defect under s. 938.30 (5).

(d) If the court has determined that the juvenile is not competent to proceed under s. 938.30 (5) and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed.

(4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST RESULTS. On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the victim or alleged victim has had contact with body fluid of the juvenile that constitutes a significant exposure, the court shall order the juvenile to submit to an HIV test and a test or series of
tests to detect the presence of a sexually transmitted disease. The tests shall be administered by a health care professional. The court shall require the health care professional who performs the tests to refrain from making the test results part of the juvenile’s permanent medical record and to disclose the results of the tests to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.
(b) The victim or alleged victim, if the victim or alleged victim is an adult.
(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.
(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the victim or alleged victim.
(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS. On receipt of an application for an order under sub. (2m), the court shall set a time for a hearing on the application. If the juvenile has been found not competent to proceed under s. 938.30 (5), the court may hold a hearing under this subsection only if the court first determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the act or alleged act of the juvenile that constitutes a violation of s. 946.43 (2m) carried without the personal participation of the juvenile, the court shall order the juvenile to submit to a test or series of tests administered by a health care professional to detect the presence of any communicable disease that was potentially transmitted by the act or alleged act of the juvenile. The court shall require the health care professional who performs the test or series of tests to refrain from making the test results part of the juvenile’s permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the juvenile.
(b) The victim or alleged victim, if the victim or alleged victim is an adult.
(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child.
(d) The health care professional that provides care for the juvenile, upon request by the parent, guardian or legal custodian of the victim or alleged victim.
(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(6) PAYMENT FOR TEST COSTS. The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4) or (5). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).


938.2965 Waiting area for victims and witnesses.

(1) DEFINITION. In this section, “witness” has the meaning given in s. 807.13 (2).

(2) COUNTY TO PROVIDE. If an area is available and use of the area is practical, a county shall provide a waiting area for a victim or witness to use during hearings under this chapter that is separate from any area used by the juvenile, the juvenile’s relatives, and witnesses for the juvenile. If a separate waiting area is not available or its use is not practical, a county shall provide other means to minimize the contact between the victim or witness and the juvenile, the juvenile’s relatives, and witnesses for the juvenile during hearings under this chapter.

dian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the juvenile or the juvenile’s family or if the court determines that excluding the foster parent or other physical custodian would be in the best interests of the juvenile.

(am) Subject to s. 906.15, if a public hearing is not held, in addition to persons permitted to attend under par. (a), a victim of a juvenile’s act or alleged act may attend any hearing under this chapter based upon the act or alleged act, except that the court may exclude a victim from any portion of a hearing that deals with sensitive personal matters of the juvenile or the juvenile’s family and that does not directly relate to the act or alleged act committed against the victim. A member of the victim’s family and, at the request of the victim, a representative of an organization providing support services to the victim, may attend the hearing under this subsection.

(C) 1. Notwithstanding par. (a) and except as provided under subd. 2., the general public may attend any hearing under this chapter relating to a juvenile who has been alleged to be delinquent for committing a violation specified in s. 938.34 (4h) (a).

2. The court shall exclude the general public from a hearing if the victim of a sexual assault objects and, in its discretion, exclude the general public from any portion of a hearing that deals with sensitive personal matters of the juvenile or the juvenile’s family and that does not relate to the act or alleged act committed by the juvenile or from any other hearing described in this paragraph. If the court excludes the general public from a hearing described in this paragraph, only those persons who are permitted under par. (a) or (am) to attend a hearing from which the general public excluded may attend.

(av) If a public hearing is held under par. (a) or (ar), any person may disclose to anyone any information obtained as a result of that hearing.

(b) Except as provided in par. (av) and s. 938.396, any person who divulges any information that would identify the juvenile or the family involved in any proceeding under this chapter is subject to s. 967.35 967.35 (3), the general public may attend any hearing under this chapter pending the outcome of the paternity proceedings under subch. IX of ch. 767 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court’s disposition of the juvenile if the juvenile is found to be in need of protection or services and the court determines or has reason to know that the paternity of the child may result in a finding that the juvenile is an Indian juvenile and in a petition by the juvenile’s parent, Indian custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

(c) The court having jurisdiction over actions affecting the family shall give priority under s. 767.82 (7m) to an action brought under s. 767.80 whenever the petition filed under s. 767.80 indicates that the matter was referred by the court under par. (a).

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

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

2. The court shall, at the hearing, orally inform any man specified in subj. (6) (intro.) that he may be required to pay for any testing ordered by the court under this paragraph or under s. 855.23.

3. In addition to ordering testing as provided under s. 855.23, if the court determines that it would be in the best interests of the juvenile, the court may order any man specified in subj. (6) (intro.) to submit to one or more genetic tests which shall be performed by an expert qualified as an examiner of genetic markers present on the cells of the specific body material to be used for the tests, as appointed by the court. A report completed and certified by the court-appointed expert stating genetic test results and the statistical probability that the man alleged to be the juvenile’s father is the juvenile’s biological father based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing. The court, upon request by a party, may order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body materials to be used for the tests.

4. If the genetic tests show that an alleged father is not excluded and that the statistical probability that the alleged father is the juvenile’s biological father is 99.0% or higher, the court may determine that for purposes of a proceeding under this chapter or ch. 48, other than a proceeding under subch. VIII of ch. 48, the man is the juvenile’s biological parent.

5. A determination by the court under subj. 4. is not a judgment of paternity under ch. 767 or an adjudication of paternity under subch. VIII of ch. 48.

(7) E S T A B L I S H M E N T OF PATERNITY WHEN NO MAN ALLEGES PATERNITY. If a man who has been given notice under s. 938.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the juvenile and state that...
he wishes to establish the paternity of the juvenile or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.80, of whether an action should be brought for the purpose of determining the paternity of the juvenile.

8 Testimony of juvenile's mother relating to paternity. As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the juvenile's mother relating to the juvenile's paternity. A record made under this subsection is admissible in a proceeding to determine the juvenile's paternity under subch. IX of ch. 767.

9 Indian juvenile: tribal court involvement. (a) If a petition under s. 938.12 or 938.13 (12) includes the statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed in a tribal court with respect to a juvenile to whom the circumstances specified in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate with the tribal court in which the other proceeding is or may be pending to discuss which court is the more appropriate forum.

(b) If the court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the court that the tribal court is the more appropriate forum, the court shall dismiss the petition without prejudice or stay the proceeding.

The court's decision shall be based on the best interests of the juvenile and of the public.

(c) If a stay is ordered under par. (b), jurisdiction of the court continues over the juvenile until one year has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the juvenile, the court may, on motion and notice to the parties, subsequently lift the stay order and take any further action in the proceeding as the interests of the juvenile and of the public require. When jurisdiction of the court over the juvenile terminates by reason of the lapse of the one year following the last order affecting the stay, the clerk of the court shall, without notice, enter an order dismissing the petition.

10 If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7) the court determines or has reason to know that the juvenile is an Indian juvenile, the court shall provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe in the manner specified in s. 938.028 (4) (a).

The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or, if the identity or location of the parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. Secretary of the Interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.


Sub. (1) (am) allows relatives of homicide victims to attend the fact−finding hearing.

938.29 Juvenile justice code. Updated 09–10 Wis. Stats. Database 36

30 Plea hearing. (1) Time of hearing. Except as provided in this subsection and s. 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition under s. 938.12, 938.125, or 938.13 (12) or (14), to determine whether any party wishes to contest an allegation that the juvenile is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition or issuance of a citation for a juvenile who is not being held in secure custody or within 10 days after the filing of a petition or issuance of a citation for a juvenile who is being held in secure custody. In a municipal court operated jointly by 2 or more cities, towns or vil-

degrees under s. 755.01 (4), the hearing to determine the juvenile's plea shall take place within 45 days after the filing of a petition or issuance of a citation for a juvenile who is not being held in secure custody.

2 Information to juvenile and parents: basic rights; substitution. At or before the commencement of the hearing under this section the juvenile and the parent, guardian, legal custodian, or Indian custodian shall be advised of their rights as specified in s. 938.243 and shall be informed that the hearing shall be to the court and that a request for a substitution of judge under s. 938.29 must be made before the end of the plea hearing or is waived. Nonpetitioning parties, including the juvenile, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a substitution of a judge.

3 Juvenile in need of protection or services proceeding: possible pleas. If a petition alleges that a juvenile is in need of protection or services under s. 938.13 (4), (6), (6m), (7) or (14), the nonpetitioning parties and the juvenile, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition.

4 Delinquency and civil law or ordinance proceeding: possible pleas. If a delinquency petition under s. 938.12, a civil law or ordinance violation petition or citation under s. 938.125, or a petition alleging that the juvenile is in need of protection or services under s. 938.13 (12) is filed, the juvenile may select any of the following pleas:

(a) Admit some or all of the facts alleged in the petition or citation.

(b) Deny the facts alleged in the petition or citation.

(c) Except in the case of a petition or citation under s. 938.125, state that he or she is not responsible for the acts alleged.

(bm) Plead no contest to the allegations, if the court permits the juvenile to enter that plea.

(4m) Court to inquire about notice to victims. Before accepting a plea under sub. (4) in a proceeding in which a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), the court shall inquire of the district attorney or corporation counsel as to all of the following:

(a) Whether he or she has complied with ss. 938.265 and 938.27 (4m).

(b) Whether any of the known victims requested notice of the date, time, and place of the plea hearing and, if so, whether the district attorney or corporation counsel provided that notice.

5 Not competent or not responsible. (a) If there is probable cause to believe that the juvenile has committed the alleged offense and if there is reason to doubt the juvenile’s competency to proceed, or if the juvenile enters a plea of not responsible by reason of mental disease or defect, the court shall order an examination under s. 938.295 and shall specify the date by which the report must be filed in order to give the district attorney or corporation counsel and the juvenile's counsel a reasonable opportunity to review the report. The court shall set a date for hearing as follows:

1. If the juvenile admits or pleads no contest to the allegations in the petition, the hearing to determine whether the juvenile was not responsible by reason of mental disease or defect shall be held no more than 10 days from the plea hearing for a juvenile held in secure custody and no more than 30 days from the plea hearing for a juvenile who is not held in secure custody.

2. If the juvenile denies the allegations in the petition or citation, the court shall hold a fact−finding hearing on the allegations.
in the petition or citation as provided under s. 938.31. If, after the hearing, the court finds that the allegations in the petition have been proven, the court shall immediately hold a hearing to determine whether the juvenile was not responsible by reason of mental disease or defect.

3. If the court has found probable cause to believe that the juvenile has committed the alleged offense and reason to doubt the juvenile’s competency to proceed, the hearing to determine whether the juvenile is competent to proceed shall be held no more than 10 days after the plea hearing for a juvenile who is held in secure custody and no more than 30 days after the plea hearing for a juvenile who is not held in secure custody.

(b) If the court, after a hearing under par. (a) 1. or 2., finds that the juvenile was responsible, the court shall proceed to a dispositional hearing.

(bm) If the court, after a hearing under par. (a) 3., finds that the juvenile is competent to proceed, the court shall resume the delinquency proceeding.

(c) If the court finds that the juvenile was not responsible by reason of mental disease or defect, as described under s. 971.15 (1) and (2), the court shall dismiss the petition with prejudice and do one of the following:

1. If the court finds that there is probable cause to believe that the juvenile meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.215, 46.22 or 46.23 in the county of the juvenile’s residence or the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition alleging that the juvenile is in need of protection or services under s. 938.15 (1) (a).

(d) If the court finds that the juvenile is not competent to proceed, as described in s. 971.13 (1) and (2), the court shall suspend proceedings on the petition and do one of the following:

1. If the court finds that there is probable cause to believe that the juvenile meets the conditions specified under s. 51.20 (1) (a) 1. and 2., order the county department under s. 46.215, 46.22 or 46.23 in the county of the juvenile’s residence or the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition under s. 51.20 (1).

2. Order the district attorney or corporation counsel who filed the petition under s. 938.12 or 938.13 (12) to file a petition alleging that the juvenile is in need of protection or services under s. 938.15 (1) (a).

(e) 1. A juvenile who is not competent to proceed, as described in s. 971.13 (1) and (2), but who is likely to become competent to proceed within 12 months or within the time period of the maximum sentence that may be imposed on an adult for the most serious delinquent act with which the juvenile is charged, whenever he is less, and who is not held under s. 51.20 following an order under par. (d) 1. or who is placed under a dispositional order following an order under par. (d) 2., shall be periodically reexamined with written reports of those reexaminations to be submitted to the court every 3 months and within 30 days before the expiration of the juvenile’s commitment or dispositional order. Each report shall indicate one of the following:

a. That the juvenile has become competent.

b. That the juvenile remains incompetent but that attainment of competence is likely within the remaining period of the commitment or dispositional order.

c. That the juvenile has not made such progress that attainment of competency is likely within the remaining period of the commitment or dispositional order.

2. The court shall cause copies of the reports under subd. 1. to be transmitted to the district attorney or corporation counsel and the juvenile’s counsel. If a report under subd. 1. indicates that the juvenile has become competent, the court shall hold a hearing within 10 days after the court receives the report to determine whether the juvenile is competent. If the court determines that the juvenile is competent, the court shall terminate the juvenile’s commitment or dispositional order and resume the delinquency proceeding.

3. If the juvenile is receiving psychotropic medication, the court may make appropriate orders for the continued administration of the psychotropic medication in order to maintain the competence of the juvenile for the duration of the proceeding.

6. UNCONTESTED PETITIONS: DISPOSITION. (a) If a petition is not contested, the court, subject to s. 938.299 (10), shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days from the plea hearing for a juvenile who is held in secure custody and no more than 30 days from the plea hearing for a juvenile who is not held in secure custody. Subject to s. 938.299 (10), if all parties consent, the court may proceed immediately with the dispositional hearing. If a citation is not contested, the court may proceed immediately to enter a dispositional order.

(b) If it appears to the court that disposition of the case may include placement of the juvenile outside the juvenile’s home, the court shall order the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile’s parent to the court or the designated agency under s. 938.33 (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 that statement a document setting forth the percentage standard established by the department of children and families under s. 49.22 (9) and listing the factors that a court may consider under s. 301.12 (14) (c).

(c) If the court orders the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and juvenile’s parent to the court or if the court orders the juvenile’s parent to provide that statement to the designated agency under s. 938.33 (1) and the designated agency is not the county department, the court shall also order the juvenile’s parent to provide the statement to the county department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department shall provide, without charge, to the parent a form on which to provide the statement, and the parent shall provide the statement on the form. The county 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 juvenile.

7. CONTESTED PETITIONS OR CITATIONS: DATE FOR FACT-FINDING HEARING. If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set a date for the fact-finding hearing that allows a reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a juvenile who is held in secure custody and no more than 30 days after the plea hearing for a juvenile who is not held in secure custody.

8. ADMISSION OR NO CONTEST PLEA: INQUIRIES REQUIRED. Except when a juvenile fails to appear in response or stipulates to a citation before accepting an admission or plea of no contest of the alleged facts in a petition or citation, the court shall do all of the following:

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

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

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the juvenile’s plea or the parent’s and juvenile’s admission.
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(9) Hearings conducted by court commissioner. Court to review. If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 938.12 or 938.13, the court shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries under sub. (8).

(10) Telephone or live audiovisual participation. The court may permit any party to participate in hearings under this section by telephone or live audiovisual means except a juvenile who intends to admit the facts of the delinquency petition.


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

A court’s failure to inform a juvenile of the right to judicial substitution does not affect the court’s competence and warrants reversal only if the juvenile suffers actual prejudice. State v. Kywanda F. 200 Wis. 2d 26, 546 N.W.2d 441 (1996), 94–1866.

NOTE: The above annotations cite to s. 48.30, the predecessor statute to s. 938.30.

938.305 Hearing upon the involuntary removal of a juvenile. Notwithstanding other time periods for hearings under this chapter, if a juvenile is removed from the physical custody of the juvenile’s parent or guardian under s. 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject to s. 938.299 (10), shall schedule a plea hearing and fact−finding hearing within 30 days after a request from the parent or guardian from whom custody was removed. The plea hearing and fact−finding hearing may be combined. This time period may be extended only with the consent of the requesting parent or guardian.

History: 1995 a. 77; 2009 a. 94.

938.31 Fact−finding hearing. (1) Definition. In this section, “fact−finding hearing” means a hearing to determine if the allegations of a petition under s. 938.12 or 938.13 (12) are supported beyond a reasonable doubt or a hearing to determine if the allegations in a petition or citation under s. 938.125 or 938.13 (4), (6), (6m), (7) or (14) are proved by clear and convincing evidence.

(2) Hearing to the court. Procedures. The hearing shall be to the court. If the hearing involves a child victim, as defined in s. 938.02 (20m) (a) 1., or a child witness, as defined in s. 950.02 (5), the court may order that a deposition be taken by audiovisual means and allow the use of a recorded 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 shall make a determination of the facts. If the court finds that the juvenile is not within the jurisdiction of the court or the court finds that the facts alleged in the petition or citation have not been proved, the court shall dismiss the petition or citation with prejudice.

(3) Admissibility of custodial interrogations. (a) In this subsection:

1. “Custodial interrogation” has the meaning given in 968.073 (1) (a).
2. “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).
3. “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).
4. “Statement” has the meaning given in s. 972.115 (1) (d).
(b) Except as provided under par. (c), a statement made by the juvenile during a custodial interrogation is not admissible in evidence against the juvenile in any court proceeding alleging the juvenile to be delinquent unless an audio or audio and visual recording of the interrogation was made as required under s. 938.195 (2) and is available.
(c) A juvenile’s statement is not inadmissible in evidence under par. (b) if any of the following applies or if other good cause exists for not suppressing a juvenile’s statement under par. (b): 1. The juvenile refused to respond or cooperate in the custodial interrogation if an audio or audio and visual recording was made of the interrogation so long as a law enforcement officer or

agent of a law enforcement agency made a contemporaneous audio or audio and visual recording or written record of the juvenile’s refusal.
2. The statement was made in response to a question asked as part of the routine processing after the juvenile was taken into custody.
3. The law enforcement officer or agent of a law enforcement agency conducting the interrogation in good faith failed to make an audio or audio and visual recording of the interrogation because the recording equipment did not function, the officer or agent inadvertently failed to operate the equipment properly, or, without the officer’s or agent’s knowledge, the equipment malfunctioned or stopped operating.
4. The statement was made spontaneously and not in response to a question by a law enforcement officer or agent of a law enforcement agency.
5. Exigent public safety circumstances existed that prevented the making of an audio or audio and visual recording or rendered the making of such a recording infeasible.

(d) Notwithstanding ss. 968.28 to 968.37, a juvenile’s lack of consent to having an audio or audio and visual recording made of a custodial interrogation does not affect the admissibility in evidence of an audio or audio and visual recording of a statement made by the juvenile during the interrogation.

(4) Findings by court. The court shall make findings of fact and conclusions of law relating to the allegations of a petition under s. 938.12, 938.125 or 938.13. In cases alleging a juvenile to be delinquent or in need of protection or services under s. 938.13 (12), the court shall make findings relating to the proof of the violation of law and to the proof that the juvenile named in the petition committed the violation alleged.

(5) If the juvenile is an Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall also determine at the fact−finding hearing whether continued custody of the Indian juvenile by the Indian juvenile’s parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1. and whether active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and whether those efforts have proved unsuccessful, unless partial summary judgment on the allegations under s. 938.13 (4), (6), (6m), or (7) is granted, in which case the court shall make those determinations at the dispositional hearing.

(6) Date for dispositional hearing. (a) At the close of the fact−finding hearing, the court, subject to s. 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable time for the parties to prepare but is no more than 10 days after the fact−finding hearing for a juvenile in secure custody and no more than 30 days after the fact−finding hearing for a juvenile not held in secure custody. Subject to s. 938.299 (10), 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 juvenile outside the juvenile’s home, the court shall order the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile’s parent, to the court or the designated agency under s. 938.33 (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 the statement a document setting forth the percentage standard established by the department of children and families under s. 49.22 (9) and listing the factors that a court may consider under s. 301.12 (14) (c).
(c) If the court orders the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and juvenile’s parent’s to the court or if the court orders the juvenile’s parent to provide the statement to the designated agency under s. 938.33 (1) and the designated agency is not the county department, the court shall also order the juvenile’s parent to pro−
vide the statement to the county department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department shall provide, without charge, to the parent a form on which to provide the statement, and the parent shall provide the statement on the form. The county 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 juvenile.

**History:** 1995 a. 27 s. 9126 (19); 1995 a. 77; 1997 a. 27, 35, 181, 237, 252; 1999 a. 32, 103; 2001 a. 38; 2005 a. 42, 66, 344; 2007 a. 20, 97; 2009 a. 94.

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 jury trial is not constitutionally required in the adjudicative phase of a state juvenile court delinquency proceeding. McKeiver v. Pennsylvania, 403 U.S. 528.

If the court knows or has reason to know is an Indian juvenile to request of the parent, Indian custodian, or tribe of a juvenile whom video the statement to the county department at least 5 days before

**History:** 1995 a. 181.

938.315 Delays, continuances and extensions.

(1) TIME PERIODS TO BE EXCLUDED. The following time periods shall be excluded in computing time periods under this chapter:

(a) Any period of delay resulting from any of the following:

1. Other legal actions concerning the juvenile, including an examination under s. 938.295 or a hearing related to the juvenile’s mental condition, prehearing motions, waiver motions, and hearings on other matters.  
2. A continuance granted at the request of or with the consent of the juvenile and counsel.  
3. The disqualification or substitution of a judge or by any other transfer of the case or intake inquiry to a different judge, intake worker or county.  
4. A continuance granted at the request of the representative of the public under s. 938.12 or in need of protection or services under s. 938.13 (12) and the petition is dismissed or does not result in a consent decree or dispositional order, the district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile’s alleged act that the petition has been dismissed or will not result in a consent decree or dispositional order.  
5. Court congestion or scheduling.  
6. The imposition of a consent decree.  
7. The absence or unavailability of the juvenile.  
8. The inability of the court to provide the juvenile with notice of an extension hearing under s. 938.365 due to the juvenile having run away or otherwise having made himself or herself unavailable to receive that notice.  
9. The need to appoint a qualified interpreter.  
10. Consultation under s. 938.24 (2r) or 938.25 (2g).

(b) 3. that those efforts have been made to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, or an initial finding under s. 938.21 (5) (b) 3., 938.355 (2) (b) 6., or 938.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies, more than 60 days after the date on which the juvenile was removed from the home.

(b) The court making an initial finding under s. 938.38 (5m) that the agency primarily responsible for providing services to the juvenile has made reasonable efforts to achieve the goals of the juvenile’s permanency plan more than 12 months after the date on which the juvenile was removed from the home or making any subsequent findings under s. 938.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

(3) CONSEQUENCES OF FAILURE TO ACT WITHIN TIME PERIOD. Failure by the court or a party to act within any time period specified in this chapter does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. Failure to object to a period of delay or a continuance waives any challenge to the court’s competency to act during the period of delay or continuance. If the court or a party does not act within a time period specified in this chapter, the court, while assuring the safety of the juvenile, may grant a continuance under sub. (2), dismiss the petition with or without prejudice, release the juvenile from secure or nonsecure custody or from the terms of a custody order, or grant any other relief that the court considers appropriate.


A consent decree provides for a period of supervision that terminates when the period concludes. Its expiration is not a “time limit” under sub. (3). State v. Sarah P. R.P. 2001 WI App 49, 241 Wis. 2d 530, 624 N.W.2d 872, 00−2127.

The expiration date of a dispositional order is not a time limit contemplated in sub. (3). The length of time a dispositional order can remain in effect, however, is not really a requirement or deadline by which something must be done to proceed to the next step. State v. Michael S., Jr. 2005 WI 82, 282 Wis. 2d 1, 698 N.W.2d 673, 03−2934.

938.317 Jeopardy. Jeopardy attaches when a witness is sworn.

**History:** 1995 a. 77.

938.32 Consent decree.

(1) WHEN ORDERED; TERMS; VICTIMS’ RIGHTS; PROCEDURES. (a) At any time after the filing of a petition for a proceeding relating to s. 938.12 or 938.13 and before the entry of judgment, the court may suspend the proceedings and place the juvenile under supervision in the juvenile’s own home or present placement. The court may establish terms and conditions applicable to the parent, guardian, or legal custodian, and to the juvenile, including any of the conditions specified in sub. (1d), (1g), (1m), (1p), (1q), (1x), and (1x). The order under this section shall be known as a consent decree and must be agreed to by the juvenile; the parent, guardian, or legal custodian; and the person filing the petition under s. 938.25. If the consent decree includes any conditions specified in sub. (1g), the consent decree shall include provisions for payment of the services as specified.
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in s. 938.361. The consent decree shall be in writing and be given to the parties.

(am) Before entering into a consent decree in a case in which the juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12), the district attorney or corporation counsel shall, as soon as practicable but before agreeing to the consent decree, offer all of the victims of the juvenile’s alleged act who have so requested an opportunity to confer with the district attorney or corporation counsel concerning the proposed consent decree. The duty to offer an opportunity to confer under this paragraph does not limit the obligation of the district attorney or corporation counsel to exercise his or her discretion concerning the handling of the proceeding against the juvenile.

(b) Before entering into a consent decree in a proceeding in which a juvenile is alleged to be delinquent under s. 938.12 or to be in need of protection or services under s. 938.13 (12) all of the following shall occur:

1g. The court shall determine whether a victim of the juvenile’s act wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read in court. The court may allow any other person to make or submit a statement under this subdivision. Any statement made under this subdivision must be relevant to the consent decree.

1m. The court shall inquire of the district attorney or corporation counsel whether he or she has complied with par. (am), whether he or she has complied with subd. 2. and s. 938.27 (4m), whether any of the known victims requested notice of the date, time, and place of any hearing to be held on the consent decree, and, if so, whether the district attorney provided to the victim notice of the date, time, and place of the hearing.

2. The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under subd. 1g. Any failure to comply with this subdivision is not a ground for discharge of the juvenile, parent, guardian, or legal custodian from fulfilling the terms and conditions of the consent decree.

(c) 1. If at the time the consent decree is entered into the juvenile is placed outside the home under a voluntary agreement under s. 48.63 or is otherwise living outside the home without a court order and if the consent decree maintains the juvenile in that placement or other living arrangement, the consent decree shall include all of the following:

a. A finding that placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

b. A finding as to whether the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

c. If a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile’s permanency plan, including, if appropriate, through an out−of−state placement.

NOTE: Subd. 1. c. is shown as affected by 2 acts of the 2000 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

d. If the juvenile’s placement or other living arrangement is under the supervision of the county department, an order ordering the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

1m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, the consent decree shall include a finding as to whether the county department or agency primarily responsible for providing services to the juvenile has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child [juvenile] and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

NOTE: The correct word is shown in brackets. Corrective legislation is pending.

2. If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the consent decree shall include a determination that the county department or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

3. The court shall make the findings specified in subds. 1. and 2. on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the consent decree. A consent decree that references subd. 1. or 2. without documenting or referencing that specific information in the consent decree or an amended consent decree that retroactively corrects an earlier consent decree that does not comply with this subdivision is not sufficient to comply with this subdivision.

(d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(c) 1. In the case of an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7), if at the time the consent decree is entered into the Indian juvenile is placed outside the home of his or her parent or Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living outside that home without a court order and if the consent decree maintains the Indian juvenile in that placement or other living arrangement, the consent decree shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 938.028 (4) (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under par. (c) 1., except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under par. (c) 1. shall be considered to be the same findings.

2. If the placement or other living arrangement under subd. 1. departs from the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), the court shall also find good cause, as described in s. 938.028 (6) (d), for departing from that order.

(1d) VOLUNTEERS IN PROBATION PROGRAM. If the petition alleges that the juvenile has committed 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, the court may establish as a condition under sub. (1) that the juvenile be placed with that vol-

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?*
PARTICIPATION IN YOUTH REPORT CENTER. The court may establish as a condition under sub. (1) that the juvenile report to a youth report center after school, in the evening, on weekends, on other nonschool 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 program, if the condition of the consent decree provides for an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) was completed under s. 938.295 (1).

(b) That the juvenile participate in a court-approved alcohol or other drug abuse education program.

(1m) TEEN COURT PROGRAM. The court may establish as a condition under sub. (1) that the juvenile 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 court determines that participation in the 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, in the presence of the juvenile’s parent, guardian or legal custodian, 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.

(1p) PARTICIPATION IN YOUTH REPORT CENTER. The court may establish as a condition under sub. (1) that the juvenile report to a youth report center after school, in the evening, on weekends, on other nonschool 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 program, if the condition of the consent decree provides for an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) was completed under s. 938.295 (1).

(b) That the juvenile participate in a court-approved alcohol or other drug abuse education program.

(1q) ALCOHOL OR OTHER DRUG ABUSE TREATMENT AND EDUCATION. If the petition alleges that the juvenile committed a violation specified under ch. 961 and if the multidisciplinary screen conducted under s. 938.24 (2) shows that the juvenile is at risk of having needs and problems related to the use of alcohol beverages, controlled substances, or controlled substance analogs and its medical, personal, family, and social effects, the court may establish as a condition under sub. (1) any of the following:

(a) That the juvenile participate in outpatient treatment from an approved treatment facility for alcohol and other drug abuse, if an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 938.547 (4) was completed under s. 938.295 (1).

(b) That the juvenile participate in a court-approved alcohol or other drug abuse education program.

(1r) ALCOHOL AND OTHER DRUG ABUSE TREATMENT; INFORMED CONSENT. If the conditions of the consent decree provide for an alcohol and other drug abuse outpatient treatment program under sub. (1g) (a), the juvenile or, if the juvenile has not attained 12 years of age, the juvenile’s parent, guardian, or legal custodian shall execute an informed consent form that indicates that they are voluntarily and knowingly entering into a consent decree for the provision of alcohol and other drug abuse outpatient treatment.

(1t) RESTITUTION. (a) 1. Subject to subd. 3., if the petition alleges that the juvenile committed a delinquent act that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may require the juvenile as a condition of the consent decree, 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 consent decree that includes a condition of restitution by a juvenile 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 consent decree for the payment or for the completion of the services, and may include a schedule for the performance and completion of the services. If the juvenile objects to the amount of damages claimed, a hearing shall be held to determine the amount of damages before an amount of restitution is made part of the consent decree. Any recovery under this subdivision shall be reduced by the amount recovered as restitution for the same act under subd. 1m.

(b) The court may require the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g) as a condition of the consent decree.

(c) The court may require as a condition under sub. (1) that the juvenile’s parent, guardian, or legal custodian attend school with the juvenile.

(1u) SUPERVISED WORK PROGRAM. If the petition alleges that the juvenile is in need of protection or services under s. 938.13 (6), the court may require as a condition under sub. (1) that the juvenile’s parent, guardian, or legal custodian attend school with the juvenile.

(1v) PARENTAL SCHOOL ATTENDANCE. If the petition alleges that the juvenile is in need of protection or services under s. 938.13 (6), the court may require as a condition under sub. (1) that the juvenile’s parent, guardian, or legal custodian attend school with the juvenile.

(1w) TIME PERIOD FOR CONSENT DECREE EXTENSION. (a) A consent decree shall remain in effect for up to one year unless the juvenile, parent, guardian, or legal custodian is discharged sooner by the court.

(b) The court may, after giving notice to the parties to the consent decree, extend the time period for the consent decree, but only for one year.
and their counsel, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the parent, guardian or legal custodian objects to the extension, the court shall schedule a hearing and make a determination on the issue of extension. (3) **Failure to follow objection to continuity consent decree.** If, prior to discharge by the court or to the expiration of the consent decree, the court finds that the juvenile or parent, legal guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree or that the juvenile objects to the continuation of the consent decree, the hearing under which the juvenile was placed on supervision may be continued to conclusion as if the consent decree had never been entered. (4) **Discharge by court or completion of supervision.** A juvenile whose discharge is approved by the court or who completes the period of supervision without reinstatement of the original petition may not be proceeded against in any court for the same offense alleged in the petition or an offense based on the same conduct, and the original petition shall be dismissed with prejudice. This subsection does not preclude a civil suit against the juvenile or parent for damages arising from the juvenile’s conduct. (5) **Recommendation from subsequent proceedings.** A court which, under this section, elicits or examines information or material about a juvenile which would be inadmissible in a hearing on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies: (a) the court refuses to enter into a consent decree, the allegations in the petition remain to be decided, and the juvenile denies the allegations of delinquency. (b) A consent decree is granted but the petition under s. 938.12 or 938.13 is subsequently reinstated. (6)** Notice to juvenile or right to object to continuation.** The court shall inform the juvenile and the juvenile’s parent, guardian, or legal custodian, in writing, of the juvenile’s right to object to the continuation of the consent decree under sub. (3) and of the fact that the hearing under which the juvenile was placed on supervision may be continued to conclusion as if the consent decree had never been entered.


**SUBCHAPTER VI**

**Disposition**

938.33 **Court reports.** (1) **Report required.** Before the disposition of a juvenile adjudged to be delinquent or in need of protection or services, the court shall designate an agency, as defined in s. 938.38 (1) (a), to submit a report that contains all of the following: (a) The social history of the juvenile. (b) A recommended plan of rehabilitation or treatment and care for the juvenile, based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 938.295, that employs the most effective means available to accomplish the objectives of the plan. (c) A description of the specific services or continuum of services that the agency is recommending for the juvenile or family, the persons or agencies that would be primarily responsible for providing those services, and the identity of the person or agency that would provide case management or coordination of services, if any, and whether or not the juvenile should receive a coordinated services plan of care. (d) A statement of the objectives of the plan, including any desired behavior changes and the academic, social and vocational skills needed by the juvenile. (e) A plan for the provision of educational services to the juvenile, prepared after consultation with the staff of the school in which the juvenile is enrolled or the last school in which the juvenile was enrolled. (f) If the agency is recommending that the court order the juvenile’s parent, guardian, or legal custodian to participate in mental health treatment, anger management, individual or family counseling, or parent training and education, a statement as to the availability of those services and the availability of funding for those services. (2) **Home placement reports.** A report recommending that the juvenile remain in his or her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record. (3) **Correctional placement reports.** A report recommending placement of a juvenile in a juvenile correctional facility or a secured residential care center for children and youth shall be in writing, except that the report may be presented orally at the dispositional hearing if the juvenile and the juvenile’s counsel consent. A report that is presented orally shall be transcribed and made a part of the court record. In addition to the information specified under sub. (1) (a) to (d), the report shall include all of the following: (a) A description of any less restrictive alternatives that are available and that have been considered, and why they have been determined to be inappropriate. If the court has found that any of the conditions specified in s. 938.34 (4m) (b) 1., 2., or 3. applies, the report shall indicate that a less restrictive alternative than placement in a juvenile correctional facility or a secured residential care center for children and youth is not appropriate. (b) A recommendation for an amount of child support to be paid by either or both of the juvenile’s parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support. (3r) **Serious juvenile offender report.** If a juvenile has been adjudicated delinquent for committing a violation for which the juvenile may be placed in the serious juvenile offender program under s. 938.34 (4h) (a), the report shall be in writing and, in addition to the information specified in sub. (1) and in sub. (3) or (4), if applicable, shall include an analysis of the juvenile’s suitability for placement in the serious juvenile offender program under s. 938.34 (4h) or in a juvenile correctional facility under s. 938.34 (4m), a placement specified in s. 938.34 (3), or placement in the juvenile’s home with supervision and community–based programming and a recommendation as to the type of placement for which the juvenile is best suited. (4) **Other out–of–home placements.** A report recommending placement in a foster home, group home, or nonsecure residential care center for children and youth, in the home of a relative other than a parent, or in the home of a guardian under s. 48.977 (2) shall be in writing, except that the report may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record. The report shall include all of the following: (a) A permanency plan prepared under s. 938.38. (b) A recommendation for an amount of child support to be paid by either or both of the juvenile’s parents or for referral to the county child support agency under s. 59.53 (5) for the establishment of child support. (c) Specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile, specific information showing that the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the
juvenile’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.335 (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, specific information showing that the county department or agency has made reasonable efforts to achieve the goal of the juvenile’s permanency plan[,] including, if appropriate, through an out-of-state placement[.]

NOTE: Par. (c) was created as par. (d) by 2009 Wis. Act 94 and renumbered to par. (dm) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that the county department or agency primarily responsible for providing services to the juvenile has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the county department or agency recommends that the juvenile and his or her siblings not be placed in a joint placement, in which case the report shall include specific information showing that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings and the specific information required under sub. 2.

2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, specific information showing that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

(4m) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency knows or has reason to know that the juvenile is an Indian juvenile who is being removed from the home of his or her parent or Indian custodian, a description of any efforts undertaken to determine whether the juvenile is an Indian juvenile; specific information showing that continued custody of the juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that active efforts to prevent the removal of the juvenile from the home, while ensuring that the juvenile’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

NOTE: Par. (dm) was created as par. (d) by 2009 Wis. Act 94 and renumbered to par. (dm) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(4m) SUPPORT RECOMMENDATIONS: INFORMATION TO PARENTS

In making a recommendation for an amount of child support under sub. (3) or (4), the agency shall consider the factors under s. 301.12 (14) (c). At or before the dispositional hearing under s. 938.335, the agency shall provide the juvenile’s parent with all of the following:

(a) Its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 301.12 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 938.363 in the amount of child support ordered by the court under s. 938.355 (2) (b) 4.

(5) IDENTIFICATION OF FOSTER PARENT; CONFIDENTIALITY

If the report recommends placement in a foster home, and the name of the foster parent is not available at the time the report is filed, the agency shall provide the court and the juvenile’s parent or guardian with the name and address of the foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the juvenile’s parent or guardian if the court finds that disclosure would result in imminent danger to the juvenile or to the foster parent. After notifying the juvenile’s parent or guardian, the court shall hold a hearing prior to ordering the information withheld.


Cross-reference: See also s. DOC 397.04, Wis. adm. code.

938.331 Court reports; effect on victim. If the delinquent act would constitute a felony if committed by an adult, the person preparing the report under s. 938.33 (1) shall attempt to determine the economic, physical and psychological effect of the delinquent act on the victim, as defined in s. 938.02 (20m) (a) 1. and 4. The person preparing the report may ask any appropriate person for information. This section does not preclude the person who prepares the report from including any information for the court concerning the impact of a delinquent act on the victim. If the delinquent act would not constitute a felony but a victim, as defined in s. 938.02 (20m) (a) 1., has suffered bodily harm or the act involved theft or damage to property, the person preparing the report is encouraged to seek the information described in this section.


938.335 Dispositional hearings. (1) WHEN REQUIRED

The court shall conduct a hearing to determine the disposition of a case in which a juvenile is adjudged to be delinquent under s. 938.12, to have violated a civil law or ordinance under s. 938.125, or to be in need of protection or services under s. 938.13, except that the court shall proceed under s. 938.237 (2) if a citation is issued and the juvenile fails to contest the citation.

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

(3g) REASONABLE EFFORTS FINDING. At hearings under this section, if the agency, as defined in s. 938.38 (1) (a), is recommending placement of the juvenile in a foster home, group home, or residential care center for children and youth, or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile.

(b) That the county department or the agency primarily responsible for providing services to the juvenile has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

(c) That, if a permanency plan has previously been prepared for the juvenile, the county department or agency has made reasonable efforts to achieve the goal of the juvenile’s permanency plan[,] including, if appropriate, through an out-of-state placement[.]

NOTE: Par. (c) was created as par. (d) by 2009 Wis. Act 185, but its reinsertion was unsuccessful; a statement as to whether the out-of-home care placement recommended, specific information showing that the out-of-home care placement is being recommended, specific information showing that efforts to prevent the removal of the juvenile from the home, while ensuring that the juvenile’s health and safety are the paramount concerns, unless any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies.

NOTE: Par. (c) was shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

(d) 1. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

NOTE: Par. (c) was created as par. (d) by 2009 Wis. Act 94 and renumbered to par. (dm) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

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placement would be contrary to the safety or well-being of the juvenile or any of those siblings and the specific information required under subd. 2.

2. If a recommendation is made that the juvenile and his or her siblings not be placed in a joint placement, that the county department or agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the county department or agency recommends that such visitation or interaction not be provided, in which case the county department or agency shall present as evidence specific information showing that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

(3) INDIAN JUVENILE: ACTIVE EFFORTS FINDING. At hearings under this section involving an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (fam), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending removal of the Indian juvenile from the home of his or her parent or Indian custodian and placement of the Indian juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing all of the following:

(a) That continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1.

(b) That active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful.

(c) That the placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or, if that placement is not in compliance with that order, good cause, as described in s. 938.028 (6) (d), for departing from that order.

(3m) VICTIM’S STATEMENTS. Before imposing a disposition in a proceeding in which a juvenile is adjudged to be delinquent under s. 938.12 or is found to be in need of protection or services under s. 938.13 (12), all of the following shall occur:

(a) The court shall determine whether a victim of the juvenile’s act wants to make a statement to the court. If a victim wants to make a statement, the court shall allow the victim to make a statement in court or to submit a written statement to be read in the court. The court may allow any other person to make or submit a statement under this paragraph. Any statement made under this paragraph must be relevant to the disposition.

(am) The court shall inquire of the district attorney or corporation counsel whether he or she has complied with par. (b) and s. 938.27 (4m), whether any of the known victims requested notice of the date, time, and place of the dispositional hearing, and, if so, whether the district attorney or corporation counsel provided to the victim notice of the date, time, and place of the hearing.

(b) The district attorney or corporation counsel shall make a reasonable attempt to contact any known victim to inform that person of the right to make a statement under par. (am). Any failure to comply with this paragraph is not a ground for an appeal of a dispositional order or for any court to reverse or modify a dispositional order.

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

(4) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS. At hearings under this section, s. 938.357, 938.363 or 938.365, the court, which the party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(5) DISPOSITIONAL ORDER. At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 938.355.

(6) JUVENILE PLACED OUTSIDE THE HOME. If the dispositional order places the juvenile outside the home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals 18 years of age or over whose homes the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under s. 938.21 (2) (e) or (3) (f). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for providing services to the juvenile under the dispositional order shall permit the parent to provide the information at a later date.


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 terminating court’s finding that 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, including individual, family, or group counseling, homemaking or parent aide services, respite care, housing assistance, child 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.

(2g) 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 program will likely benefit the juvenile and the community, place the juvenile with the volunteers in probation program under conditions the court determines are reasonable and appropriate. These conditions may include any of the following:

(a) A directive to a volunteer to be a role model for the juvenile, informal counseling, general monitoring 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 court 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, in the presence of the juvenile’s parent, guardian, or legal custodian, 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 of the homicide of a parent of the juvenile under s. 940.01 or 940.05, 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 home of a person who is not required to be licensed as the juvenile’s placement if the person has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, 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.

(c) A 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 supervision of the court, as 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 juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule, or in a place of nonsecure custody designated by the court, subject to all of the following:

1. The placement may be for any combination of single or consecutive days totalling not more than 180, including any placement under pars. (a) to (e). The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this paragraph for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed.

2. The order may provide that the juvenile may be released from the juvenile detention facility, juvenile portion of the jail, or place of nonsecure 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 juvenile 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.

4. If a juvenile’s placement under this paragraph exceeds 30 days, whether or not consecutive, the county department shall offer the juvenile alcohol and other drug abuse treatment, counseling, and education services under sub. (6r). The payment for those services shall be in accordance with s. 938.361.

(3g) 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 RESIDENTIAL CARE CENTER FOR CHILDREN AND YOUTH PLACEMENT. Place the juvenile in a Type 2 residential care center for children and youth 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 that would be punishable by a sentence of 6 months or more if committed by an adult.

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

(c) The juvenile is 14 years of age or over and has been adjudicated delinquent for committing or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 943.127 (2) (b) 4., 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (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 s. 940.02 or 940.05.

(d) The juvenile has been found to be 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 or conspiring to commit a violation of s. 939.32 (1) (a), 940.03, 940.06, 940.21, 940.225 (1), 940.305, 940.31, 943.127 (2) (b) 4., 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1), 948.025 (1), or 948.30 (2) or attempting a violation of s. 943.32 (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 s. 940.02 or 940.05.

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

(4m) CORRECTIONAL PLACEMENT. Place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth under the supervision of the department if all of the following apply:

(a) The juvenile has been found to be delinquent for the commission of an act that would be punishable by a sentence of 6 months or more if committed by an adult.

(b) The juvenile has been found to be a danger to the public and to be in need of restrictive custodial treatment. If the court determines that any of the following conditions applies, but that placement in the serious juvenile offender program under sub. (4h) or in a juvenile 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:

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 (1), (1v) or (1x), 948.02 (1) or (2), 948.025, 948.03, or 948.085 (2) if committed by an adult.

2. The juvenile has possessed, used or threatened to use a handgun, as defined in s. 174.35 (1) (b), short-barreled rifle, as defined in s. 175.35 (1) (b), short-barreled shotgun, as defined in s. 175.35 (1) (b), or firearm, as defined in s. 175.35 (1) (b), with the intent to use it against another person, or participant in any activity which the court considers beneficial to the juvenile.

3. The use of placement in a juvenile 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.

4. If a juvenile’s placement under this paragraph exceeds 30 days, whether or not consecutive, the county department shall offer the juvenile alcohol and other drug abuse treatment, counseling, and education services under sub. (6r). The payment for those services shall be in accordance with s. 938.361.
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 any arrangement between the department and a county department regarding the provision of aftercare supervision for juveniles who have been released from a juvenile correctional facility or a secured residential care center for children and youth, designate one of the following to provide aftercare supervision for the juvenile following the juvenile’s release from the juvenile correctional facility or secured residential care center for children and youth:

(a) The department.

(b) The county department of the county of the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(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 that 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.

The 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. If the juvenile objects to the amount of damages claimed, the juvenile is entitled 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).

(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 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).

(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 (14r).

(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.

(b) 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.

(7) **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.

(b) 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 constructive and designed to promote the rehabilitation of the juvenile, appropriate to the age level and physical ability of the juvenile, and 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) The court may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parent. 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) COORDINATED SERVICES PLAN OF CARE. If the report prepared under s. 938.33 (1) recommends that the juvenile is in need of a coordinated services plan of care and if an initiative under s. 46.56 has been established in the county or, if applicable, by a tribe, order that an assessment of the juvenile and the juvenile’s family for eligibility for and appropriateness of the initiative, and if eligible for enrollment in the initiative, that a coordinated services plan of care 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, 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, 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) indicates that the juvenile is in need of treatment for the use or abuse of controlled substances or controlled substance analogs, order the juvenile to undergo 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. Under a contractual agreement with the school district in which the juvenile resides, a nonresidential educational program provided by a licensed child welfare agency.
3. Under 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 2004d.
4. Under 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.
5. Under a contractual agreement with the school district in which the child resides, an educational program provided by a tribal school.

(b) The court shall order the school board to disclose the juvenile’s pupil records, as defined under s. 118.125 (1), 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, tribal school, 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) EXPERIMENTAL EDUCATION. Order the juvenile to participate in a wilderness challenge program or other experimental education program.

(7y) YOUTH REPORT CENTER. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool 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 the juvenile’s 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. The forfeiture 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; 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 if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. 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, if the license is issued under ch. 29, 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).
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 secretary of administration under s. 59.25 (3) (f) 2.

(c) If a juvenile placed in a juvenile correctional facility or a secured residential care center for children and youth fails to pay the surcharge under par. (a), the department shall assess and collect the amount owed from the juvenile’s wages or other monies. Any amount collected shall be transmitted to the secretary of administration.

(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 shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license a notice of suspension stating that the suspension is for failure to pay a surcharge imposed by the court, together with any license issued under ch. 29 of which the court takes possession. 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, if the license is issued under ch. 29, return the license to the juvenile.

(11) TRANSFER TO FOREIGN COUNTRIES 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 for 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), 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 may not impose the requirement under par. (a) if the court determines that the juvenile would pose a threat to public safety while completing the requirement.

(13t) GRAFFITI VIOLATION. If the juvenile is adjudicated delinquent for a violation of s. 943.017, 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.

(14d) HATE VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have committed a violation of which, if committed by an adult, the adult would be subject to a penalty enhancement under s. 939.645, order any one or more of the following dispositions:

(a) Restitution under sub. (5).

(b) Participation in a supervised work program or other community service work under sub. (5g) or (5m).

(c) Participation in a victim–offender mediation program under sub. (5r) or an other means of apologizing to the victim.

(d) Participation 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 may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation 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.

14q) CERTAIN BOMB SCARES AND FIREARM VIOLATIONS. In addition to any other disposition imposed under this section, if the juvenile is found to have violated s. 947.015 and the property involved is owned or leased by the state or any political subdivision of the state, or if the property involved is a school premises, as defined in s. 948.61 (1) (c), or if the juvenile is found to have violated s. 941.235 or 948.605, immediately suspend the juvenile’s operating privilege, as defined in s. 340.01 (40), for 2 years.

The court shall immediately forward to the department of transportation the notice of suspension, stating that the suspension is for a violation of s. 947.015 involving school premises, or for a violation of s. 941.235 or 948.605. If otherwise eligible, the juvenile is eligible for an occupational license under s. 343.10.

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 may suspend the juvenile’s operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. If a court suspends a person’s operating privilege under this paragraph, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension or revocation is for a violation of ch. 961.

NOTE: Par. (a) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).
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 or 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 an alcohol or other drug abuse education program.

(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 or court-approved alcohol or other drug abuse education program, the approved treatment facility 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 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 the juvenile is not participating in, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment 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 (20), 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, tribal, 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), 948.025, or 948.085 (2), 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 the 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) 1. 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 s. 942.08 or 942.09, 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.

2. If the court under subd. 1. orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order, the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(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, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, or 948.085 (2), 948.095, 948.11 (2) or (am), 948.12, 948.13, or 948.30, of s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies, 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) 1. 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.

6. 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 the order 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 or the district attorney or corporation counsel in the county in which the dispositional order was entered 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; 2000 a. 16, 59, 69, 202, 203; 2001 a. 14, 253, 277, 344; 2007 a. 97, 116, 2009 a. 8, 28, 103, 137, 185, 302, 334; 2011 a. 32; s. 133.92 (2) (f); s. 35.17 correction in (3) (f).

Cross-reference: See also ch. DOC 392 Wis. adm. code.

Sub. (4h) does not encompass similar offenses from other jurisdictions. A juvenile may not be 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. 213 Wis. 2d 277, 750 N.W.2d 582 (Cl. App. 1997). 97-0606.

Sub. (16) permits the juvenile or the district attorney or corporation counsel in the county in which the dispositional order was entered to use the stay of portion commencing when the stay is lifted and terminating upon the completion of the term stated in the stay order. State v. Kendall G. 2001 Wis. App 85, 251 Wis. 2d 67, 625 N.W.2d 918, 00-3240.

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 previous disposition, already in effect. State v. Terry T. 2002 Wis. App 81, 251 Wis. 2d 462, 643 N.W.2d 175, 01-222-2226.

A circuit court has discretion under sub. (16) to stay that part of a dispositional order requiring a delinquent child to register as a sex offender. In determining whether to grant a stay, the court should consider the seriousness of the offense committed, as the factors enumerated in sub. (15m) (c) and s. 301.45 (1m) (c). Sex offender registration is part of a dispositional order under this section and sub. (16) allows a circuit court to stay a dispositional order or any number of the dispositions set forth within the order. State v. Cesar G. 2004 Wis. 61, 272 Wis. 2d 22, 682 N.W.2d 1, 02-2106.

Mandatory sex offender registration under sub. (15m) is not criminal punishment. If a provision is not criminal punishment, there is no constitutional right to a jury trial. Sub. (15m) does not violate the guarantees of substantive due process or equal protection. State v. Jensen 2005 Wis. App 137, 278 Wis. 2d 366, 652 N.W.2d 311, 04-0360.

Sub. (4m) permits a juvenile court to order an adjudged delinquent to a secured correctional facility. Under sub. (16), a trial court, after ordering a disposition, may stay the execution of the dispositional order contingent on the juvenile’s satisfactory compliance with any conditions the court specifies in the dispositional order and explains to the juvenile. That the Racine County juvenile court, Racine County Human Services Department and Racine Unified School District joined together to offer a voluntary residential treatment program for adjudged juvenile delinquents as an alternative to a “secured correctional facility” not found in this section does not make a juvenile’s participation illegal. State v. Andrew J. 2006 Wis. App 126, 293 Wis. 2d 20, 724 N.W.2d 229, 05-2395.

Under s. 938.34 (6), assessing the damages to the victim is the first step in the court’s determination of restitution and determining the amount the juvenile is capable of paying is the second. Whichever amount is lower is the maximum amount that the court order as restitution. Under s. 895.035 (2m) (a), courts are without authority to order that the “total damage” figure be converted to a civil judgment. Section 895.035 (2m) (a) allows for the conversion of restitution. State v. Anthony D. 2006 Wis. App 218, 296 Wis. 2d 771, 723 N.W.2d 775, 05-2644.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile’s placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a dispositional order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a dispositional order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 Wis. App 242, 297 Wis. 2d 20, 724 N.W.2d 665, 06-0555.

Sub. (7d) authorizes a circuit court to order a juvenile to attend a variety of educational programs, but it does not authorize a circuit court to order a school district to create an educational program or contract for an educational program. Madison Metropolitan School District v. Circuit Court for Dane County. 2011 Wis 72, 336 Wis. 2d 95, 800 N.W.2d 442, 09-2845.


938.34 Delinquency adjudication; restriction on firearm possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a felony, the court shall inform the juvenile of the requirements and penalties under s. 941.29.

History: 1995 a. 77.

938.3415 Delinquency adjudication; restriction on body armor possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a violent felony, as defined in s. 941.29 (4) (6), the court shall inform the juvenile of the requirements and penalties under s. 941.29.1

History: 2001 a. 95.

938.342 Disposition; truancy and school dropout ordinance violations. (1d) TRUANCY ORDINANCE VIOLATIONS. If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Order the person to attend school.

(b) Impose a forfeiture of not more than $30 plus costs for a first violation, or a forfeiture of not more than $100 plus costs for any 2nd or subsequent violations committed within 12 months of a previous violation, subject to s. 938.37 and subject to a maximum cumulative forfeiture amount of not more than $500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(c) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool days, or at any other time that the person is not under immediate adult supervision, for participation in the social, behavioral, academic, community service, and other programming of the center. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

(1g) HABITUAL TRUANCY ORDINANCE VIOLATIONS. If the court finds that a person under 18 years of age has violated a municipal ordinance enacted under s. 118.163 (2), the court shall enter an order making one or more of the following dispositions if the disposition is authorized by the municipal ordinance:

(a) Suspend the person’s operating privilege, as defined in s. 304.01 (40), for not less than 30 days nor more than one year. The court may take possession of the suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation a notice stating the reason for and duration of the suspension.

(b) Order the person to participate in counseling or a supervised work program or other community service work as described in s. 938.34 (5p). The costs of any counseling, supervised work program, or other community service work may be assessed against the person, the parents or guardian of the person, or both. Any county department, community agency, public agency, or nonprofit charitable organization administering a supervised work program or other community service work to which a person is assigned under an order under this paragraph acting in good faith has immunity from any civil liability in excess of $25,000 for any act or omission by or impacting on that person.

(c) Order the person to remain at home except during hours in which the person is attending religious worship or a school pro-

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?"
gram, including travel time required to get to and from the school program or place of worship. The order may permit a person to leave his or her home if the person is accompanied by a parent or guardian.

(d) Order the person to attend an educational program under s. 938.34 (7d).

(e) Order the department of workforce development to revoke, under s. 103.72, a permit under s. 103.70 authorizing the employment of the person.

(f) Order the person to be placed in a teen court program if all of the following conditions apply:

1. The chief judge of the judicial administrative district has approved a teen court program established in the person’s county of residence and the court determines that participation in the teen court program will likely benefit the person and the community.

2. The person admits or pleads no contest in open court, in the presence of the person’s parent, guardian, or legal custodian, to the allegations that the person violated the municipal ordinance enacted under s. 118.163 (2).

3. The person has not successfully completed participation in a teen court program during the 2 years before the date of the alleged municipal ordinance violation.

(g) Order the person to attend school.

(h) Impose a forfeiture of not more than $500 plus costs, subject to s. 938.37. All or part of the forfeiture plus costs may be assessed against the person, the parent or guardian of the person, or both.

(i) Order the person to comply with any other reasonable conditions that are consistent with this subsection, including a curfew, restrictions as to going to or remaining on specified premises and restrictions on associating with other juveniles or adults.

(j) Place the person under formal or informal supervision, as described in s. 938.34 (2), for up to one year.

(k) Order the person to report to a youth report center after school, in the evening, on weekends, on other nonschool 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. Section 938.34 (5g) applies to any community service work performed by a person under this paragraph.

1m) ORDERS APPLICABLE TO PARENTS, GUARDIANS, AND LEGAL CUSTODIANS. (a) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, in addition to or instead of the dispositions under sub. (1g), order the person’s parent, guardian, or legal custodian to participate in counseling at the parent’s, guardian’s, or legal custodian’s own expense or to attend school with the person, or both, if the disposition is authorized by the municipal ordinance.

(am) If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (1m), the court may, as part of the disposition under sub. (1d), order the person’s parent or guardian to pay all or part of a forfeiture plus costs assessed under sub. (1d) (b). If the court finds that the person violated a municipal ordinance enacted under s. 118.163 (2), the court may, as part of the disposition under sub. (1g), order the person’s parent or guardian to pay all or part of the costs of any program ordered under sub. (1g) (b) or to pay all or part of a forfeiture plus costs assessed under sub. (1g) (h).

(b) No order to any parent, guardian, or legal custodian under par. (a) or (am) may be entered until the parent, guardian, or legal custodian is given an opportunity to be heard on the contemplated order of the court. The court shall cause notice of the time, place, and purpose of the hearing to be served on the parent, guardian, or legal custodian personally at least 10 days before the date of the hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases to the court. At the hearing, the parent, guardian, or legal custodian may be represented by counsel and may produce and cross-examine witnesses. A parent, guardian, or legal custodian who fails to comply with any order issued by the court under par. (a) or (am) may be proceeded against for contempt of court.

1r) SCHOOL ATTENDANCE CONDITION. If school attendance is a condition of an order under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district or the governing body of the private school in which the person is enrolled, or shall request the governing body of the tribal school in which the person is enrolled, to notify the court or, if the person is under the supervision of an agency under sub. (1g) (j), the agency that is responsible for supervising the person, within 5 days after any violation of the condition by the person.

2) SCHOOL DROPOUT ORDINANCE VIOLATION. (a) Except as provided in par. (b), if the court finds that a person is subject to a municipal ordinance enacted under s. 118.163 (2m) (a), the court shall enter an order suspending the person’s operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age.

(b) The court may order any of the dispositions specified under sub. (1g) if the court finds that suspension of the person’s operating privilege, as defined in s. 340.01 (40), until the person attains 18 years of age would cause an undue hardship to the person or the person’s family.


938.343 Disposition of juvenile adjudged to have violated a civil law or an ordinance. Except as provided by ss. 938.342 and 938.344, if the court finds that the juvenile violated a civil law or an ordinance, the court shall enter an order making one or more of the following dispositions:

1) COUNSELING. Counsel the juvenile or the parent or guardian.

2) FORFEITURE. Impose a forfeiture not to exceed the maximum forfeiture that may be imposed on an adult for committing that violation or, if the violation is only applicable to a person under 18 years of age, $50. The order shall include a finding that the juvenile alone is financially able to pay and shall allow up to 12 months for the payment. If a juvenile fails to pay the forfeiture, the court may suspend any license issued under ch. 29 or suspend the juvenile’s operating privilege, as defined in s. 340.01 (40), for not more than 2 years. The court shall immediately take possession of the suspended license if issued under ch. 29 or, if the license is issued under ch. 343, the court may take possession of, and if possession is taken, shall destroy, the license. The court shall forward to the department which issued the license the notice of suspension stating that the suspension is for failure to pay a forfeiture imposed by the court, together with any license issued under ch. 29 of which the court takes possession. If the forfeiture is paid during the period of suspension, the court shall immediately notify the department, which shall, if the license is issued under ch. 29, return the license to the person. 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).

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 court determines that participation in the teen court program will likely benefit the juvenile and the community.

(b) The juvenile admits or pleads no contest in open court, in the presence of the juvenile’s parent, guardian or legal custodian, to the allegations that the juvenile violated the civil law or ordinance.

(c) The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged civil law or ordinance violation.
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(3) Community service work program. Order the juvenile to participate in a supervised work program or other community service work under s. 938.34 (5g).

(3m) Youth report center. Order the juvenile to report to a youth report center after school, in the evening, on weekends, on other nonschool 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. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subsection.

(4) Restitution. If the violation has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, order the juvenile to make repairs of the damage to property or 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. An order requiring payment for repairs or restitution 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 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. If the juvenile objects to the amount of damages claimed, the juvenile is entitled to a hearing on the question of damages before the amount of restitution is ordered. Any recovery under this subsection shall be reduced by the amount recovered as restitution for the same act under s. 938.45 (1r) (a).

(5) Boating safety course. If the violation is related to unsafe use of a boat, order the juvenile to attend a boating safety course under s. 30.74 (1). If the juvenile has a valid boating safety certificate at the time that the court imposes the disposition, the court shall revoke the certificate and order the person to obtain another boating safety certificate under s. 30.74 (1).

(6) Hunting, trapping, or fishing license suspension. If the violation is of ch. 350 concerning the use of snowmobiles, order the juvenile to attend a snowmobile safety course under s. 350.055. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility terrain vehicle safety course.

NOTE: Sub. (9) is shown as amended eff. 7-1-12 by 2011 Wis. Act 208. Prior to 7-1-12 it reads:

(9) All-terrain or utility terrain vehicle safety course. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility terrain vehicle safety course.

(10) Alcohol or drug assessment, treatment, or education. If the violation is related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs, order the juvenile to do any of the following:

(a) 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 perform the assessment and shall specify the date by which the assessment must be completed.

(b) Participate in an outpatient alcohol and other drug abuse treatment program if an assessment conducted under par. (a) or s. 938.295 (1) recommends treatment.

(c) Participate in a court-approved alcohol or other drug abuse education program.


Municipal courts have statutory authority to order parents of a juvenile to pay for a fee imposed on their child for violating a nontraffic municipal ordinance. OAG 4-00.

938.344 Disposition; certain intoxicating liquor, beer and drug violations. (2) Underage alcohol possession or possession on school grounds. If a court finds a juvenile committed a violation under s. 125.07 (4) (b) or 125.09 (2), or a local ordinance that strictly conforms to one of those statutes, the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not more than $50, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile’s operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile’s operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile’s operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation of s. 125.07 (4) (b) involved a motor vehicle the juvenile’s operating privilege shall be suspended under s. 343.30 (6) (b) 2.  

(2b) Underage purchase of alcohol or entering licensed premises. If a court finds a juvenile committed a violation under s. 125.07 (4) (a), or a local ordinance which strictly conforms to s. 125.07 (4) (a), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $250 nor more than $500, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of one previous violation, a forfeiture of not less than $300 nor more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile’s operating privilege may be suspended under s. 343.30 (6) (b) 2., except that if the violation involved a motor vehicle the juvenile’s operating privilege shall be suspended under s. 343.30 (6) (b) 2.

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $300 or participation in a supervised work program or other community service work under s. 938.34 (5g). In addition, the juvenile’s operating privilege may be suspended under s. 343.30 (6) (b) 3., except that if the violation involved a motor vehicle the juvenile’s operating privilege shall be suspended under s. 343.30 (6) (b) 3.

(2d) False proof of age. If a court finds a juvenile committed a violation under s. 125.085 (3) (b), or a local ordinance which strictly conforms to s. 125.085 (3) (b), the court shall order one or any combination of the following penalties:

(a) For a first violation, a forfeiture of not less than $100 nor more than $500, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 1., or participation in a supervised work program or other community service work under s. 938.34 (5g).

(b) For a violation committed within 12 months of a previous violation, a forfeiture of not less than $300 nor more than $500, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 1.
(6) a., or participation in a supervised work program or other community service work under s. 938.34 (5).

(c) For a violation committed within 12 months of 2 or more previous violations, a forfeiture of $500, suspension of the juvenile’s operating privilege under s. 343.30 (6) (b) 3., or participation in a supervised work program or other community service work under s. 938.34 (5).

(2e) DRUG PARAPHERNIAL VIOLATION. (a) If a court finds a juvenile committed a violation under s. 961.573 (2), 961.574 (2) or 961.575 (2), or a local ordinance that strictly conforms to one of those statutes, 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 and, in addition, shall order one of the following penalties:

1. For a first violation, a forfeiture of not more than $50 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

2. For a violation committed within 12 months of a previous violation, a forfeiture of not more than $100 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

3. For a violation committed within 12 months of 2 or more previous violations, a forfeiture of not more than $500 or participation in a supervised work program or other community service work under s. 938.34 (5g) or both.

(b) Whenever a court suspends a juvenile’s operating privilege under this subsection, the court may take possession of any suspended license. If the court takes possession of a license, it shall destroy the license. The court shall forward to the department of transportation the notice of suspension stating that the suspension is for a violation 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 the juvenile does not currently possess a valid operator’s license under ch. 343, the suspension under this subsection is effective on the date on which the juvenile is first eligible for issuance or reinstatement of an operator’s license under ch. 343.

(2g) STAY OF ORDER. (a) After ordering a penalty under sub. (2), (2b), (2d) or (2e), the court, with the agreement of the juvenile, may enter an additional order staying the execution of the penalty order and suspending or modifying the penalty imposed. The order under this paragraph shall require the juvenile to do any of the following:

1. Submit to an alcohol and other drug abuse assessment that conforms to the criteria 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 alcohol or other drug abuse assessment conducted under subd. 1. or s. 938.295 (1) recommends treatment.

3. Participate in a court-approved alcohol or other drug abuse education program.

4. Participate 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 court determines that participation in the teen court program will likely benefit the juvenile and the community.

b. The juvenile admits or pleads no contest in open court, in the presence of the juvenile’s parent, guardian or legal custodian, to the allegations that the juvenile committed the violation specified in sub. (2), (2b), (2d) or (2e).

c. The juvenile has not successfully completed participation in a teen court program during the 2 years before the date of the alleged violation.

5. Report to a youth report center after school, in the evening, on weekends, on other nonschool 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. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

(b) 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 par. (a) and that the juvenile does not need treatment, intervention or education, the court shall notify the juvenile of whether or not the penalty will be reinstated.

(c) If the juvenile completes the alcohol or other drug abuse treatment program or court-approved alcohol or other drug abuse education program, the approved treatment facility 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 penalty will be reinstated.

(d) If an approved treatment facility 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, or has not satisfactorily completed, a recommended alcohol or other drug abuse treatment program or a court-approved alcohol or other drug abuse education program, the court shall hold a hearing to determine whether to impose the penalties under sub. (2), (2b), (2d), or (2e).

(2lm) COUNTING VIOLATIONS. For purposes of subs. (2) to (2e), all violations arising out of the same incident or occurrence shall be counted as a single violation.

(3) PROSECUTION IN ADULT COURT. If the juvenile alleged to have committed the violation is within 3 months of his or her 17th birthday, the court assigned to exercise jurisdiction under this chapter and ch. 48 may, at the request of the district attorney or on its own motion, dismiss the citation without prejudice and refer the matter to the district attorney for prosecution under ch. 880, 2003 stats. Section 938.34 (5g) applies to any community service work performed by a juvenile under this subdivision.

938.345 Disposition of juvenile adjudged in need of protection or services. (1) DISPOSITION ORDER. If the court finds that the juvenile is in need of protection or services, the court shall enter an order including one or more of the dispositions under s. 938.34 under a care and treatment plan except that the order may not do any of the following:

(a) Place the juvenile in the serious juvenile offender program juvenile correctional facility or a secured residential care center for children and youth.

(b) Order payment of a forfeiture or surcharge.

(c) Restrict or suspend the driving privileges of the juvenile, except as provided under sub. (2).

(d) Place any juvenile not found under ch. 880, 2003 stats., or ch. 46, 49, 51, 54, or 115 to have a developmental disability or a

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*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
mental illness or to be a child with a disability, as defined in s. 115.76 (5), in a facility that exclusively treats one or more of those categories of juveniles.

(g) Place the juvenile in a juvenile detention facility or juvenile portion of a county jail or in nonsecure custody under s. 938.34 (3) (f).

(1m) INDIAN JUVENILE: PLACEMENT PREFERENCES. (a) Subject to s. 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, the court shall designate one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the Indian juvenile, in the order of preference listed, unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2) SCHOOL DropoutS AND HABITUAL TRUANTS. If the court finds that a juvenile is in need of protection or services based on the fact that the juvenile is a school dropout, as defined in s. 118.153 (1) (b), or based on habitual truancy, and the court also finds that the juvenile has dropped out of school or is a habitual truant as a result of the juvenile’s intentional refusal to attend school rather than the failure of any other person to comply with s. 118.15 (1) (a) and (am), the court, instead of or in addition to any other disposition imposed under sub. (1), may enter an order permitted under s. 938.342.

(3) SEX OFFENDER REGISTRATION. (a) If the court finds that a juvenile is in need of protection or services on the basis of a violation, or the solicitation, conspiracy, or attempt to commit a violation, under ch. 940, 944, or 948 or s. 942.08 or 942.09, 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. 960.01 (5), and that it is in the interest of public protection to have the juvenile report under s. 301.45. In determining whether it is 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.

6. Any other factor that the court determines may be relevant to the particular case.

(b) 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.

(c) If the court orders a juvenile to comply with the reporting requirements under s. 301.45, the clerk of the court in whose order is entered shall promptly forward a copy of the order to the department. If the finding of need of protection or services on which the order is based is reversed, set aside, or vacated, the clerk of the court shall promptly forward to the department a certificate stating that the finding has been reversed, set aside or vacated.

(d) If the court under par. (a) orders the juvenile to comply with the reporting requirements under s. 301.45 in connection with a violation, or the solicitation, conspiracy, or attempt to commit a violation, of s. 942.09, the court may provide that the juvenile be released from the requirement to comply with the reporting requirements under s. 301.45 upon satisfying the conditions of the dispositional order imposed for the offense. If the juvenile satisfies the conditions of the dispositional order, the clerk of the court shall notify the department that the juvenile has satisfied the conditions of the dispositional order.

(4) UNCONTROLLABLE JUVENILES. If the court finds that a juvenile is in need of protection or services under s. 938.13 (4), the court, instead of or in addition to any other disposition imposed under sub. (1), may place the juvenile in the home of a guardian under s. 48.977 (2).


938.346 Notice to victims of juveniles’ acts. (1) INFORMATION TO VICTIMS. Each known victim of a juvenile’s act shall receive timely notice of the following information:

(a) The procedures under s. 938.396 (1) (c) 5. and 6. for obtaining the identity of the juvenile and the juvenile’s parents.

(b) The procedure under s. 938.396 (1) (c) 5. for obtaining the juvenile’s police records.

(c) The potential liability of the juvenile’s parents under s. 895.035.

(d) Either of the following:

1. Information regarding any decision to close a case under s. 938.24 (5m), any deferred prosecution agreement under s. 938.245, any decision not to file a petition under s. 938.25 (2m), any consent decree under s. 938.32 or any dispositional order under ss. 938.34 to 938.345. The information may not include reports under s. 938.295 or 938.33 or any other information that deals with sensitive personal matters of the juvenile and the juvenile’s family and that does not directly relate to the act alleged act committed against the victim. This subdivision does not affect the right of a victim to attend any hearing that the victim is permitted to attend under s. 938.299 (1) (am).

2. The procedure for obtaining the information in subd. 1.

(e) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to an HIV test, as defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of a sexually transmitted disease, as defined in s. 252.11 (1), and to have the results of the tests disclosed as provided in s. 938.296 (4) (a) to (e).

(ec) The procedure under s. 938.296 under which the victim, if an adult, or the parent, guardian or legal custodian of the victim, if the victim is a child, may request an order requiring a juvenile who is alleged to have violated s. 946.43 (2m) to submit to a test or a series of tests to detect the presence of communicable diseases and to have the results of that test or series of tests disclosed as provided in s. 938.296 (5) (a) to (e).

(em) The right to confer, if requested, with an intake worker regarding deferred prosecution agreements under s. 938.245 (1m) or with a district attorney or corporation counsel under s. 938.265 regarding the possible outcomes of the proceedings and under s. 938.32 (1) (am) regarding consent decrees.

(f) The right to request and receive notice of the time and place of any hearing that the victim may attend under s. 938.299 (1) (am).

(fm) All of the following:

1. The right to a separate waiting area as provided under s. 938.2965.

2. The right to have his or her interest considered concerning continuances in the case under s. 938.315 (2).

3. The right to have victim impact information included in a court report under s. 938.33 and to have the person preparing the court report attempt to contact the victim, as provided under s. 938.331.

4. The right to employer interference services under s. 950.04 (1v) (bm).

(g) The right to make a statement to the court as provided in ss. 938.32 (1) (b) and 938.335 (3m).

(b) All of the following:
1. The right to be accompanied by a service representative, as provided under s. 985.45.
2. The right to restitution, as provided under ss. 938.245, 938.32 (1t) and 938.34 (5).
3. The right to compensation, as provided under subch. 1 of ch. 949.
4. The right to a speedy disposition of the case under s. 950.04 (1v) (k).
5. The right to have personal property returned, as provided under s. 950.04 (1v) (6).
6. The right to complain to the department of justice concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims rights board of the complaint, as provided under s. 950.09 (2).

(1m) DUTIES OF INTAKE WORKERS AND DISTRICT ATTORNEYS. The intake worker shall make a reasonable attempt to provide notice of the information under sub. (1) (a), (b), (c), and (h), the information under sub. (1) (d) relating to a deferred prosecution agreement under s. 938.245, the information under sub. (1) (em) relating to the right to confer, if requested, on deferred prosecution agreements and the information under sub. (3) if the juvenile’s case is closed. The district attorney or corporation counsel shall make a reasonable attempt to provide notice of the information under sub. (5) (c), (f), (fm), (g), and (h), the information under sub. (1) (d) relating to a consent decree under s. 938.32 or a dispositional order under ss. 938.34 to 938.345, the information under sub. (1) (em) relating to the right to request an opportunity to confer, if requested, on amendment of petitions, consent decrees and disposition recommendations and the information under sub. (3) if he or she decides not to file a petition or the proceeding is terminated without a consent decree or dispositional order after the filing of a petition.

(2) RESTRICTIONS ON DISCLOSURE OF INFORMATION. The notice under sub. (1) shall include an explanation of the restrictions on disclosing information obtained under this chapter and the penalties for violating the restrictions.

(3) CLOSED CASES. If an inquiry is closed by an intake worker or otherwise does not result in a deferred prosecution agreement, the intake worker shall make a reasonable attempt to inform each known victim of the juvenile’s alleged act as provided in s. 938.24 (5m). If a district attorney or corporation counsel decides not to file a petition or if, after a petition is filed, a proceeding is dismissed otherwise does not result in a consent decree or dispositional order, a district attorney or corporation counsel shall make a reasonable attempt to inform each known victim of the juvenile’s alleged act as provided in s. 938.25 (2m) or 938.312, whichever is applicable.

(4) CHILD VICTIMS. If the victim, as defined in s. 938.02 (20m) (a) 1., is a child, the notice under this section shall be given to the child’s parents, guardian or legal custodian.

(5) COURT POLICIES AND RULES. Chief judges and circuit court judges shall establish by policy and rule procedures for the implementation of this section. Subject to subch. (1m) and (3), the policies and rules shall specify when, how and by whom the notice under this section shall be provided to victims and with whom victims may confer regarding deferred prosecution agreements, amendment of petitions, consent decrees and disposition recommendations.


938.35 Effect of judgment and disposition. (1) EFFECT AND ADMISSIBILITY OF JUDGMENT. The court shall enter a judgment setting forth the court’s findings and disposition in the proceeding. A judgment in a proceeding on a petition under this chapter is not a conviction of a crime, does not impose any civil disabilities ordinarily resulting from the conviction of a crime and does not operate to disqualify the juvenile in any civil service application or appointment. The disposition of a juvenile, and any record of evidence given in a hearing in court, is not admissible as evidence against the juvenile in any case or proceeding in any other court except for the following:

(a) In sentencing proceedings after conviction of a felony or misdemeanor and then only for the purpose of a presentence investigation.

(b) In a proceeding in any court assigned to exercise jurisdiction under this chapter and ch. 48.

(c) In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a juvenile.

(cm) In a court of civil or criminal jurisdiction for purposes of setting bail under ch. 909 or impeaching a witness under s. 906.09.

(d) The fact that a juvenile has been adjudged delinquent on the basis of unlawfully and intentionally killing a person is admissible for the purpose of s. 854.14 (5) (b).

(e) In a hearing, trial, or other proceeding under ch. 980.

(1m) FUTURE CRIMINAL PROCEEDINGS BARRIED. Disposition by the court assigned to exercise jurisdiction under this chapter and ch. 48 of any allegation under s. 938.12 or 938.13 (12) shall bar any future proceeding on the same matter in criminal court when the juvenile attains 17 years of age. This paragraph [subsection] does not affect proceedings in criminal court that have been transferred under s. 938.18.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

(2) COURT DISCLOSURE OF INFORMATION. Except under sub. (1), this section does not preclude the court from disclosing information to qualified persons if the court considers the disclosure to be in the best interests of the juvenile or of the administration of justice.


If evidence of a prior rape is introduced at a rape trial to prove identity, testimony of the prior rape victim is admissible notwithstanding that the defendant was tried as a juvenile for the prior rape. Sanford v. State, 76 Wis. 2d 72, 250 N.W.2d 348 (1977).

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

NOTE: The above annotations cite to s. 48.35, the predecessor statute to s. 938.35.

938.355 Dispositional orders. (1) INTENT. In any order under s. 938.34 or 938.345, the court shall decide on a placement and treatment finding based on evidence submitted to the court. The disposition shall employ those means necessary to promote the objectives under s. 938.01. If the court has determined that any of the conditions specified in s. 938.34 (4m) (b), (e), (f), or (g) applies, that determination shall be prima facie evidence that a less restrictive alternative than placement in a juvenile correctional facility or a secured residential care center for children and youth is not appropriate. If information under s. 938.331 has been provided in a court report under s. 938.33 (1), the court shall consider that information when deciding on a placement and treatment finding.

(2) CONTENT OF ORDER; COPY TO PARENT. (a) In addition to the order, the court shall make written findings of fact and conclusions of law based on the evidence presented to the court to support the disposition ordered, including findings as to the juvenile’s condition and need for special treatment or care if an examination or assessment was conducted under s. 938.295. A finding may not include a finding that a juvenile is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:
1. The specific services to be provided to the juvenile and the juvenile’s family, and, if custody is to be transferred to effect the treatment plan, the identity of the legal custodian.

1m. A notice that the juvenile’s parent, guardian, or legal custodian or the juvenile, if 14 years of age or older, may request an agency that is providing care or services for the juvenile or that has legal custody of the juvenile to disclose to, or make available for
inspections by, the parent, guardian, legal custodian, or juvenile the contents of any record kept or information received by the agency about the juvenile as provided in s. 938.78 (2) (ag).

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

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

4. If the juvenile is placed outside the juvenile’s home, a designation of the amount of support, if any, to be paid by the juvenile’s parent, guardian or trustee, specifying that the support shall be paid by the juvenile’s parent, guardian or trustee.

and the address of the prospective foster parents withheld from the identity of the foster parent would result in imminent danger to the juvenile or the foster parent, the court may order the name and address of the prospective foster parents withheld from the parent or guardian.

5. For a juvenile placed outside his or her home under an order s. 938.34 (3) or 938.34, a permanency plan under s. 938.38 if one has been prepared.

6. If the juvenile is placed outside the home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile or, if the juvenile has been adjudicated delinquent and is placed outside the home under s. 938.34 (3) (a), (c), (cm), or (d) or (4d), a finding that the current residence will not safeguard the welfare of the juvenile or the community due to the serious nature of the act for which the juvenile was adjudicated delinquent. The court order shall also contain a finding as to whether the county department or the agency primarily responsible for providing services to a court order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns, unless the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies, and, if a permanency plan has previously been prepared for the juvenile, a finding as to whether the county department or agency has made reasonable efforts to achieve the goal of the juvenile’s permanency plan[,] including, if appropriate, through an out−of−state placement[.]. The court shall make the findings specified in this subdivision on a case−by−case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

NOTE: Subd. 6. is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

6g. If the juvenile is placed outside the home under the supervision of the county department, an order directing the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility for providing services to the juvenile.

6m. If the juvenile is placed outside the home in a placement recommended by the agency designated under s. 938.33 (1), a statement that the court approves the placement recommended by the agency or, if the juvenile is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties relating to the juvenile’s placement.

6p. If the juvenile is placed outside the home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts to place the sibling in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well−being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well−being of the juvenile or any of those siblings.

6q. If the court finds that any of the circumstances under sub. (2d) (b) 1. to 4. applies with respect to a parent, a determination that the county department or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

6v. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4) (6) (6m) or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian juvenile under s. 938.028 (4) (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 6., except that for the sole purpose of determining whether the cost of providing care for the Indian juvenile for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 6. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

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

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

(cm) 1. Subject to subd. 2., the court shall order the county department or the agency primarily responsible for providing services to the juvenile under the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 938.21 (5) (e) 2. a. to. e. to all relatives of the juvenile named under s. 938.335 (6) and to all adult relatives, as defined

"2009−10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?"
in s. 938.21 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under s. 938.335 (6) within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under s. 938.335 (6) or to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 938.21 (5) (e) 2.

(d) The court shall provide a copy of the dispositional order to the juvenile’s parent, guardian, legal custodian, or trustee and, if the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian and placed outside that home under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile’s Indian custodian and tribe.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department or the agency primarily responsible for providing services to a juvenile under a court order may, at the same time as the county department or agency is making the reasonable efforts required under sub. (2) (b) 6. to prevent the removal of the juvenile from the home or to make it possible for the juvenile to reunify with his or her home, work with the department of children and families, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the juvenile for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, including reasonable efforts to identify an appropriate out-of-state placement.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2) (b) 6. as to whether a county department which provides social services or other agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to prevent the removal of the juvenile from his or her home, while assuring that the juvenile’s health and safety are the paramount concerns, the court’s consideration of reasonable efforts shall include whether:

1. A comprehensive assessment of the family’s situation was completed, including a determination of the likelihood of protecting the juvenile’s health, safety and welfare effectively in the home.
2. Financial assistance, if applicable, was provided to the family.
3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:
   a. In-home support services, such as homemakers and parent aides.
   b. In-home intensive treatment services.
   c. Community support services, such as child care, parenting skills training, housing assistance, employment training, and emergency mental health services.
   d. Specialized services for family members with special needs.
4. Monitoring of client progress and client participation in services was provided.
5. A consideration of alternative ways of addressing the family’s needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2) (b) 6. as to whether the county department or the agency primarily responsible for providing services to the juvenile under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court’s consideration of reasonable efforts shall include the considerations under par. (a) and whether visitation schedules between the juvenile and his or her parents were implemented, unless visitation was denied or limited by the court.

(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:

1. “Aggravated circumstances” include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse, and sexual abuse.
2. “Sexual abuse” means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.085 (2), 948.09 or 948.10 if committed in this state.

(b) Notwithstanding sub. (2) (b) 6., the court is not required to include in a dispositional order a finding as to whether the county department or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a juvenile to prevent the removal of the parent from the home, while assuring that the juvenile’s health and safety are the paramount concerns, or, if applicable, a finding as to whether the county department or agency has made reasonable efforts with respect to a parent of a juvenile to achieve the permanency plan goal of returning the juvenile safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the juvenile to aggravated circumstances, as evidenced by a final judgment of conviction.
2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.
3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., or s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), or 948.085 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the juvenile or another child of the parent.
4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

(bm) The court shall make a finding specified in par. (b) 1. to 4. on a case–by–case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 4. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) If the court finds that any of the circumstances under par. (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(d) This subsection does not affect the requirement under sub. (2) (b) 6. that the court include in a dispositional order removing an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from the home of his or her parent or Indian custodian and placing the juvenile outside that home a...
finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful.

(2e) PERMANENCY PLANS; FILING; AMENDED ORDERS; COPIES. (a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 938.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a juvenile’s placement is changed under s. 938.357 or a dispositional order is revised under s. 938.363 or extended under s. 938.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed shall be made a part of the court order.

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

(2m) TRANSITIONAL PLACEMENTS. The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 938.357 and 938.363 govern when those transitions take place. The court may place specific time limitations on transitional placements made for the care of the juvenile pending the availability of the dispositional placement.

(3) PARENTAL VISITATION. (a) Except as provided in par. (b), if, after a hearing on the issue with due notice to the parent or guardian, the court finds that it would be in the best interest of the juvenile, the court may set reasonable rules of parental visitation.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a parent of a juvenile if the parent has been convicted of the homicide of the juvenile’s other parent under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated.

1m. Except as provided in subd. 2., if a parent who is granted visitation rights with a juvenile under par. (a) is convicted of the homicide of the juvenile’s other parent under s. 940.01 or 940.05, and the conviction has not been reversed, set aside, or vacated, the court shall issue an order prohibiting the parent from having visitation with the juvenile on petition of the juvenile, the guardian or legal custodian of the juvenile, a person or agency bound by the dispositional order, or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court’s own motion, and on notice to the parent.

2. Subdivisions 1 and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the juvenile. The court shall consider the wishes of the juvenile in making that determination.

(3m) ORDERS BASED ON EVIDENCE. Dispositional orders under s. 938.345 or 938.344 shall be based upon the evidence except that this subsection does not require a dispositional hearing for the disposition of an uncontested citation.

(4) TERMINATION OF ORDERS. (a) Except as provided under par. (b) or s. 938.368, an order under this section or s. 938.357 or 938.365 made before the juvenile attains 18 years of age that places or continues the placement of the juvenile in his or her home shall terminate at the end of one year after the date on which the order is granted unless the court specifies a shorter period of time or the court terminates the order sooner. Except as provided in par. (b) or s. 938.368, an order under this section or s. 938.357 or 938.365 made before the juvenile attains 18 years of age that places or continues the placement of the juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the juvenile attains 18 years of age, at the end of one year after the date on which the order is granted, or, if the juvenile is a full−time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, when the juvenile attains 19 years of age, whichever is later, unless the court specifies a shorter period of time or the court terminates the order sooner.

(b) Except as provided in s. 938.368, an order under s. 938.34 (4d) or (4m) made before the juvenile attains 18 years of age may apply for up to 2 years after the date on which the order is granted or until the juvenile’s 18th birthday, whichever is earlier, unless the court specifies a shorter period of time or the court terminates the order sooner. If the order does not specify a termination date, it shall apply for one year after the date on which the order is granted or until the juvenile’s 18th birthday, whichever is earlier, unless the court terminates the order sooner. Except as provided in s. 938.368, an order under s. 938.34 (4h) made before the juvenile attains 18 years of age shall apply for 5 years after the date on which the order is granted, if the juvenile is adjudicated delinquent for committing a violation of s. 943.10 (2) or for committing an act that would be punishable as a Class B or C felony if committed by an adult, or until the juvenile reaches 25 years of age, if the juvenile is adjudicated delinquent for committing an act that would be punishable as a Class A felony if committed by an adult. Except as provided in s. 938.368, an extension of an order under s. 938.34 (4d), (4h), (4m), or (4n) made before the juvenile attains 17 years of age shall terminate at the end of one year after the date on which the order is granted unless the court specifies a shorter period of time or the court terminates the order sooner. No extension under s. 938.365 of an original dispositional order under s. 938.34 (4d), (4h), (4m), or (4n) may be granted for a juvenile who is 17 years of age or older when the original dispositional order terminates.

(4m) EXPUNGEMENT OF RECORD. (a) A juvenile who has been adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 may, on attaining 17 years of age, petition the court to expunge the record of the juvenile’s adjudication. Subject to par. (b), the court may expunge the record if the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order and that the juvenile will benefit from, and society will not be harmed by, the expungement.

(b) The court shall expunge the court’s record of a juvenile’s adjudication if it was the juvenile’s first adjudication based on a violation of s. 942.08 (2) (b), (c), or (d), and if the court determines that the juvenile has satisfactorily complied with the conditions of his or her dispositional order. Notwithstanding s. 938.396 (2), the court shall notify the department promptly of any expungement under this paragraph.

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

(6) SANCTIONS FOR VIOLATION OF ORDER. (a) Juvenile court orders. 1. If a juvenile who has been adjudged delinquent or to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions specified in par. (d). A sanction may be imposed under this subdivision only if, at the dispositional hearing under s. 938.335, the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

2. If a juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), (7), (12), or (14) violates a condition specified in sub. (2) (b) 7., the court may impose on the juvenile any of the sanctions under par. (d), other than placement in a juvenile detention facility or juvenile portion of a county jail. A sanction may be imposed under this subdivision only if, at the

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219*. except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
dispositional hearing under s. 938.335, the court explained the conditions to the juvenile and informed the juvenile of those possible sanctions or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

(a) Municipal court orders. 1. If a juvenile who has violated a municipal ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a dispositional order imposed by the municipal court, the municipal court may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with monitoring by an electronic monitoring system. A sanction may be imposed under this subdivision only if, at the time of the judgment, the municipal court explained the conditions to the juvenile and informed the juvenile of those possible sanctions for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions. The petition shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the juvenile may be subject to that act, the names and addresses of the juvenile’s Indian custodian, if any, and tribe, if known.

2. If the court assigned to exercise jurisdiction under this chapter and ch. 48 imposes the sanction under par. (d) 1. or home detention with monitoring by an electronic monitoring system under par. (d) 3., on a petition described in subd. 1., the court shall order the municipality of the municipal court that filed the petition to pay to the county the cost of providing the sanction imposed under par. (d) 1. or 3.

(b) Motion to impose sanction. A motion for imposition of a sanction may be brought by the person or agency primarily responsible for the provision of dispositional services, the district attorney or corporation counsel, or the court that entered the dispositional order. If the court initiates the motion, that court is disqualified from holding a hearing on the motion. Notice of the motion shall be given to the juvenile, guardian ad item, counsel, parent, guardian, legal custodian, and all parties present at the original dispositional hearing. The motion shall contain a statement of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to 1963 and, if the juvenile may be subject to that act, the names and addresses of the juvenile’s Indian custodian, if any, and tribe, if known.

(bm) Indian juvenile; notice. If the person initiating the motion knows or has reason to know that the juvenile is an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance, other than an ordinance enacted under s. 118.163 (1m) or (2), the court may not order the sanction of removal from the home of the Indian juvenile’s parent and placement of the juvenile in a place of nonsecure custody specified in par. (d) 1., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile. If the court finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

(d) Sanctions permitted. If the court finds by a preponderance of the evidence that the juvenile has violated a condition of his or her dispositional order, the court may order any of the following sanctions as a consequence for any incident in which the juvenile has violated one or more conditions of his or her dispositional order:

1. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards established by the department by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the course of conduct for which the detention or nonsecure custody was imposed. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

2. Suspension of or limitation on the use of the juvenile’s operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for a period of not more than 3 years. If the juvenile does not hold a valid operator’s license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator’s license under ch. 343. If the court suspends the juvenile’s operating privileges or a renewal approved issued under ch. 343.
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29. the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval the notice of suspension, together with any approval of which the court takes possession.

3. Detention in the juvenile’s home or current residence for a period of not more than 30 days under a condition of supervision specified in the order. An order under this subdivision may require the juvenile to be monitored by an electronic monitoring system.

4. Not more than 25 hours of uncompensated participation in a supervised work program or other community service work under s. 938.34 (5g).

5. Participation after school, in the evening, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 4. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(e) Contempt of court. This subsection does not preclude a person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) are being investigated.

(6d) SHORT-TERM DETENTION. (a) Violation of delinquency order. 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the county department relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) are being investigated.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the county department relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been adjudged delinquent violates a condition specified in sub. (2) (b) 7., the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) are being investigated.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has been adjudged delinquent and who has violated a condition specified in sub. (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

(b) Violation of condition of county aftercare supervision. 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the county department relating to aftercare supervision administered by the county department, if a juvenile who is on aftercare supervision administered by the county department violates a condition of that supervision, the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of revoking the juvenile’s aftercare status are being investigated.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the county department relating to aftercare supervision administered by the county department, if a juvenile who is on aftercare supervision administered by the county department violates a condition of that supervision, the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation.

Short-term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the county department relating to aftercare supervision administered by the county department, if a juvenile who is on aftercare supervision administered by the county department violates a condition of that supervision, the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation.

Short-term detention may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or county department who is employed in a supervisory position by a person...
authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement of the juvenile, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has violated a condition of aftercare supervision administered by a county department from being taken into and held in custody under ss. 938.19 to 938.21.

(c) Violation of protection or services order. 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) and (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been found to be in need of protection or services under s. 938.13 violates a condition specified in sub. (2) (b) 7., the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under sub. (6) or (6m) are being investigated. Short-term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile who has been found to be in need of protection or services under s. 938.13 violates a condition specified in sub. (2) (b) 7., the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short-term detention may be imposed under this subdivision only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.067 or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

4. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has been found to be in need of protection or services and who has violated a condition specified in sub. (2) (b) 7. from being taken into and held in custody under ss. 938.19 to 938.21.

(d) Hearing; when required. If a juvenile is held under par. (a), (b), or (c) in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for longer than 72 hours, the juvenile is entitled to a hearing under sub. (e) or s. 938.21. The hearing shall be conducted in the manner provided in sub. (6) or s. 938.21, except that, notwithstanding s. 938.21 (1) (a), the hearing shall be conducted within 72 hours, rather than 24 hours, after the time that the decision to hold the juvenile was made and a written statement of the reasons for continuing to hold the juvenile in custody may be filed instead of a petition under s. 938.23.

(e) County board authorization required. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a place of short-term detention under par. (a) 1. or 2. or (b) 1. or 2. 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 places of short-term detention under par. (a) 1. or 2. or (b) 1. or 2.

(fg) CETAMPIT CONTINUE VIOLATION OF ORDER. (a) If a juvenile upon whom the court has imposed a sanction under sub. (6) (a) or (6m) commits a 2nd or subsequent violation of a condition specified in sub. (2) (b) 7. or subsequent to that sanction, and found them to be ineffective.

(e) This subsection does not preclude a person who is aggrieved by a juvenile’s violation of a condition specified in sub. (2) (b) 7. from proceeding against the juvenile for contempt of court under ch. 785.
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the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions. The court may order as a sanction under this paragraph any of the following:

1g. Placement of the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody, for not more than 10 days and the provision of educational services consistent with his or her current course of study during the period of placement. The juvenile shall be given credit against the period of detention or nonsecure custody imposed under this subdivision for all time spent in secure detention in connection with the court order for which the detention or nonsecure custody was imposed. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a sanction under this subdivision 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 sanction. If the court orders placement of the juvenile in a place of nonsecure custody under the supervision of the county department, the court shall order the juvenile into the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and shall assign the county department primary responsibility for providing services to the juvenile.

2. Suspension or limitation on the use of the juvenile’s operating privilege, as defined under s. 340.01 (40), or of any approval issued under ch. 29 for not more than one year. If the juvenile does not hold a valid operator’s license under ch. 343, other than an instruction permit under s. 343.07 or a restricted license under s. 343.08, on the date of the order issued under this subdivision, the court may order the suspension or limitation to begin on the date on which the juvenile is first eligible for issuance or reinstatement of an operator’s license under ch. 343. If the court suspends a juvenile’s operating privilege or an approval issued under ch. 29 for not more than one year, the court shall immediately take possession of the suspended approval and may take possession of, and if possession is taken, shall destroy, the suspended license. The court shall forward to the department that issued the license or approval a notice stating the reason for and the duration of the suspension, together with any approval of which the court takes possession.

3. Detention in the juvenile’s home or current residence for a period of more than 30 days except during hours in which the juvenile is attending religious worship or a school program, including travel time required to get to and from the place of worship or school program. The order may permit a juvenile to leave his or her home or current residence if he or she is accompanied by a parent or guardian.

4. Participation after school, on weekends, on other nonschool days, or at any other time that the juvenile is not under immediate adult supervision, in the social, behavioral, academic, community service, and other programming of a youth report center. Subdivision 2. and s. 938.34 (5g) apply to any community service work performed by a juvenile under this subdivision.

(a) Violation of truancy order. If the court finds by a preponderance of the evidence that a juvenile who has been found to have violated a municipal ordinance enacted under s. 118.163 (1m) has violated a condition specified under sub. (2) (b) 7., the court may order as a sanction any combination of the operating privilege suspension specified in par. (a) and the dispositions specified in s. 938.335 (1g) (b) (to) to (k) and (1m), regardless of whether the disposition was imposed in the order violated by the juvenile. A sanction may be imposed under this paragraph only if at the disposition hearing under s. 938.335 the court explained those conditions to the juvenile and informed the juvenile of the possible sanctions under this paragraph for a violation or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and possible sanctions and that he or she understands those conditions and possible sanctions.

Updated 09–10 Wis. Stats. Database

*2009–10 W is. Stats. database current through 2011 Wis. Act 219*, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?.
paraphrase without documenting or referencing that specific information in the sanction order or an amended sanction order that retroactively corrects an earlier sanction order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) Indian juvenile: findings.

In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), the court may not order the sanction of removal from the home of the Indian juvenile’s parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1, and the court finds that active efforts under s. 938.028 (4) (d) 2, have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

1g. Orders applicable to parents, guardians, legal custodians, and other adults. In addition to any dispositional order entered under s. 938.34 or 938.345, the court may enter an order applicable to a juvenile’s parent, guardian, or legal custodian or to another adult, as provided under s. 938.45.


Mandatory time limits affect the trial court’s competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

Section 18.16 (5) does not limit a court’s discretion in setting school attendance requirements in a dispositional order for a delinquent juvenile and in imposing sanctions when the order is violated. By its terms, s. 118.16 (5) is limited to children who are in need of protection and services as a result of being habitual truants. State v. Jason R.N. 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1995), 96−1728.

There is no requirement that the court apply the sanctions in sub. (6) (d) in graduated order of severity. Sanctions are solely within the discretion of the court. State v. Jason R.N. 201 Wis. 2d 646, 549 N.W.2d 752 (Ct. App. 1995), 96−1728.

Sanctions for a violation of a dispositional order by a delinquent were found to not be punitive for purposes of double jeopardy. Craig S. v. State, 200 Wis. 2d 65, 561 N.W.2d 807 (Ct. App. 1997), 96−0761.

New Sub. (am)

The above annotations cite to s. 48.355, the predecessor statute to s. 938.355.

All juveniles who violate a condition of a dispositional order are subject to sanctions under sub. (d) 4, but the restrictions that may be imposed on habital truants are limited by sub. (6m). Under sub. (6g), no juvenile can be charged with contempt of court for the first violation of a dispositional order. State v. Aaron D. 214 Wis. 2d 265, 561 N.W.2d 807 (Ct. App. 1997), 96−0761.

Sub. (a) requires that the court assure that the juvenile has the ability to comprehend the conditions of a dispositional order and potential sanctions whether informed of them at the dispositional hearing or a later time. Once the issue of the juvenile’s ability to understand the conditions and sanctions is raised, the burden shifts to the prosecution to establish that the juvenile is capable of understanding the court’s warnings. State v. Eugene W. 2002 WI App 54, 251 Wis. 2d 541, 641 N.W.2d 467, 01−2274.

The focus of sub. (4) (a) is not on the juvenile’s seventeenth birthday. The critical phrase is “original dispositional order.” There is a critical distinction between an original dispositional order and an extended or revised dispositional order. State v. Terry T. 2003 WI App 21, 259 Wis. 2d 139, 657 N.W.2d 95, 02−2502.

Sub. (6) (d) recognizes that multiple conditions may be violated in any one incident but only allows one sanction per incident, not per condition violation. What constitutes an incident is determined by whether the juvenile’s course of conduct is marked by different and distinct volitional acts in between which the juvenile had sufficient time to form an independent intent to commit such acts. State v. Ellis H. 2004 WI App 123, 274 Wis. 2d 703, 684 N.W.2d 157, 03−1718.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.355 enumerates the ways in which a juvenile’s placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a dispositional order. Section 938.34 (16) specifically allows an administrative procedure for dealing with violations of a dispositional order when part of the disposition is imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 2d 20, 674 N.W.2d 665, 06−0555.

938.356 Duty of court to warn. (1) ORAL WARNING. Whenever the court orders a juvenile to be placed outside his or her home or denies a parent visitation because the juvenile has been adjudged to be delinquent or to be in need of protection or services under s. 938.34, 938.345, 938.357, 938.363, or 938.365 and whenever the court reviews a permanency plan under s. 938.38 (5m), the court shall orally inform the parent or parents who appear in court or any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the juvenile to be returned to the home or for the parent to be granted visitation.

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


938.357 Change in placement. (1) REQUEST BY PERSON OR AGENCY RESPONSIBLE FOR DISPOSITIONAL ORDER OR DISTRICT ATTORNEY. (a) Applicable procedures. The person or agency primarily responsible for implementing the dispositional order or the district attorney may request a change in the placement of the juvenile, whether or not the change requested is authorized in the dispositional order, as provided in par. (am) or (c), whichever is applicable.

(b) (am) From out−of−home placement. 1. If the proposed change in placement involves any change in placement other than a change in placement under par. (c), the person or agency primarily responsible for implementing the dispositional order or the district attorney shall cause written notice of the proposed change in placement to be sent to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), written notice shall also be sent to the Indian juvenile’s Indian custodian and tribe. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

1g. If the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the Indian juvenile’s placement outside that home to another placement outside that home, a notice under sub. (1) shall also contain a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. Any person receiving the notice under sub. 1. or notice of a specific placement under s. 938.355 (2) (b) 2. may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, legal custodian, or Indian custodian, the juvenile, if 12 or more years of age, and the juvenile’s tribe, if the juvenile is an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under sub. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court’s dispositional order.

3. If the court changes the juvenile’s placement from a placement outside the home to another placement outside the home, the
change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who has been removed from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7) from a placement outside that home to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(c) From placement in the home. 1. If the proposed change in placement would change the placement of a juvenile placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order or the district attorney shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns.

1m. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the placement of the juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a request under subd. 1. shall also contain specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the Indian juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the Indian juvenile’s health and safety are the paramount concerns.

2. The court shall hold a hearing prior to ordering a placement in accordance with this paragraph. In any proceeding involving an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall, upon the request of the parent, guardian, or legal custodian of the Indian juvenile, hold a hearing, which shall be conducted in the Indian language to the extent practicable. The hearing shall be conducted according to the rules governing juvenile court proceedings and shall include the right of the parent, guardian, or legal custodian of the Indian juvenile to be represented by counsel and to testify in their own behalf, or to be heard by the court, and shall include the right of the Indian juvenile to be represented by counsel and to testify in their own behalf, or to be heard by the court.

NOTE: The court may, when it finds good cause, change the placement of the Indian juvenile under s. 938.028 (4) (d) 1. or 2. to the court. The request shall contain the name and address of the new placement requested and the reasons for the change in placement, the statement describing why the new placement would be preferable to the present placement, and the statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the Indian juvenile in his or her home would be contrary to the welfare of the Indian juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns.

3. If the court changes the juvenile’s placement from a placement in the juvenile’s home to a placement outside the juvenile’s home, the change in placement order shall contain the findings under sub. (2v) (a) 1. the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. and, if in addition to the findings under sub. (2v) (a) 1. and 2. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2) EMERGENCY CHANGE IN PLACEMENT

If emergency conditions necessitate an immediate change in the placement of a juvenile placed outside the home, the person or agency primarily responsible for implementing the dispositional order may remove the juvenile to a new placement, whether or not authorized by the existing dispositional order, without the prior notice under sub. (1) (am) 1. The notice shall be sent within 48 hours after the emergency change in placement. Any party receiving notice may demand a hearing under sub. (1) (am) 2. In emergency situations, a juvenile may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days or in any placement authorized under s. 938.34 (3).

(2m) REQUESTS BY OTHERS

(a) REQUEST; INFORMATION REQUIRED.

The juvenile, the parent, guardian, or legal custodian of the juvenile, any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.21 (2) (e) or (3) (f) or 938.335 (6), the parent does not provide that information at the hearing, the county department or the agency primarily responsible for implementing the dispositional order shall permit the parent to provide the information at a later date.

2r. In a proceeding involving an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), if the proposed change in placement would change the placement of the juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home notice under subd. 2. to the Indian juvenile’s parent, Indian custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian juvenile’s parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile’s parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

NOTE: Subd. 2r. was created as subd. 2m. by 2011 Wis. Act 94 and renumbered to subd. 2r. by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(3) REQUESTS BY OTHERS.

(3m) REQUEST; INFORMATION REQUIRED.

The juvenile, the parent, guardian, or legal custodian of the juvenile, any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian or tribe may request a change in placement under this paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement. If the proposed change in placement would change the placement of a juvenile placed in the juvenile’s home to a placement outside the juvenile’s home, the court shall, upon the request of the parent, guardian, or legal custodian of the juvenile, hold a hearing, which shall be conducted in the Indian language to the extent practicable. The hearing shall be conducted according to the rules governing juvenile court proceedings and shall include the right of the parent, guardian, or legal custodian of the juvenile to be represented by counsel and to testify in their own behalf, or to be heard by the court, and shall include the right of the juvenile to be represented by counsel and to testify in their own behalf, or to be heard by the court.

NOTE: The court may, when it finds good cause, change the placement of the juvenile under s. 938.028 (4) (d) 1. or 2. to the court. The request shall contain the name and address of the new placement requested and the reasons for the change in placement, the statement describing why the new placement would be preferable to the present placement, and the statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the juvenile in his or her home would be contrary to the welfare of the individual juvenile and, unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns. The request shall be submitted to the court. The court may also propose a change in placement on its own motion.

*2009−10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?"
(am) Indian juvenile: information required. 1. If the proposed change of placement would change the placement of an Indian juvenile placed in the home of his or her parent or Indian custodian under s. 938.357 (4), (6), (6m), or (7) to a placement outside that home, a request under par. (a) shall also contain specific information showing that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

2. If the proposed change in placement would change the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home of his or her parent or Indian custodian to another placement outside that home, a request under par. (a) shall also contain specific information showing that the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that order, specific information showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

(b) Hearing: when required. The court shall hold a hearing prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement. A hearing is not required if the requested or proposed change in placement does not involve a change in placement of a juvenile placed in the juvenile’s home to a placement outside the juvenile’s home, written waivers of objection to the proposed change in placement are signed by all parties entitled to receive notice under this paragraph, and the court approves. If a hearing is scheduled, not less than 3 days before the hearing the court shall notify the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile, all parties who are bound by the dispositional order, and, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe. A copy of the request or proposal for the change in placement shall be attached to the notice. Subject to par. (br), if all of the parties consent, the court may proceed immediately with the hearing.

NOTE: The cross-reference to par. (br) was changed from par. (bm) by the legislative reference bureau under s. 13.92 (1) (bm) 2. of par. (bm) as created by 2009 Wis. Act 94.

(bm) Juvenile placed outside the home. If the court changes the juvenile’s placement from a placement in the juvenile’s home to a placement outside the juvenile’s home, the parent, if present at the hearing, shall be requested to provide the names and other identifying information of 3 relatives of the juvenile or other individuals whose homes are the parent requests the court to consider as placements for the juvenile, unless that information has previously been provided under this paragraph, sub. (1) (c) 2m., or s. 938.21 (2) (e) or (3) (f) or 938.335 (6). If the parent does not provide that information at the hearing, the county department or the agency primarily responsible for implementing the dispositional order shall permit the parent to provide the information at a later date.

(br) Indian juvenile: notice. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change in placement would change the placement of the Indian juvenile from a placement in the home of his or her parent or Indian custodian to a placement outside that home, notice under par. (b) to the Indian juvenile’s parent, Indian custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing on the request or proposal may be held until at least 10 days after receipt of the notice by the Indian juvenile’s parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile’s parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of the notice by the U.S. secretary of the interior.

NOTE: Par. (br) was created as par. (bm) by 2009 Wis. Act 94 and renumbered to par. (br) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(c) Findings required. 1. If the court changes the juvenile’s placement from a placement in the juvenile’s home to a placement outside the juvenile’s home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. If the court changes the juvenile’s placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2.

If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home of his or her parent or Indian custodian to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

(2r) REMOVAL FROM FOSTER HOME OR PHYSICAL CUSTODIAN. If a hearing is held under sub. (1) (am) 2. or (2m) (b) and the change in placement would remove a juvenile from a foster home or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent or other physical custodian a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the juvenile and the requested change in placement. A foster parent or other physical custodian who receives notice of a hearing under sub. (1) (am) 1. or (2m) (b) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2v) CHANGE-IN-PLACEMENT ORDER. (a) Contents of order. A change in placement order under sub. (1) or (2m) shall contain all of the following:

1. If the court changes the juvenile’s placement from a placement in the juvenile’s home to a placement outside the juvenile’s home, a finding that continued placement of the juvenile in his or her home would be contrary to the welfare of the juvenile and, unless a circumstance under s. 938.355 (2d) (1) to 4. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the juvenile from the home, while assuring that the juvenile’s health and safety are the paramount concerns.

2. If the change in placement order changes the placement of a juvenile who is under the supervision of the county depart-
ment to a placement outside the juvenile’s home, whether from a placement in the home or from another placement outside the home, an order directing the juvenile into, or to be continued in, the placement and care responsibility of the county department as required under 42 USC 672 (a) (2) and assigning the county department primary responsibility, or continued primary responsibility, for providing services to the juvenile.

2. If the change in placement order would change the placement of the juvenile to a placement outside the home recommended by the person or agency primarily responsible for implementing the dispositional order, whether from a placement in the home or from another placement outside the home, a statement that the court approves the placement recommended by the person or agency. If the change in placement order would change the placement of the juvenile to a placement outside the home that is not a placement recommended by that person or agency, whether from a placement in the home or from another placement outside the home, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the juvenile’s placement.

2m. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have been placed outside the home or for whom a change in placement to a placement outside the home is requested, a finding as to whether the county department or the agency primarily responsible for implementing the dispositional order has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court shall order the county department or agency to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

3. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safely to his or her home.

4. If the change in placement order changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding that active parental involvement is likely to result in serious emotional or physical damage to continued custody of the Indian juvenile by the parent or Indian custodian, after consulting with the child welfare agency operating the Type 2 juvenile correctional facility or a secured residential care center for children and youth, notice shall be given as provided in sub. (1) (am) 1. A hearing shall be held, unless waived by the juvenile, parent, guardian, and legal custodian, before the court makes a decision on the request. The juvenile is entitled to counsel at the hearing, and any party opposing or favoring the proposed new placement may present relevant evidence and cross-examine witnesses. The proposed new placement may be approved only if the court finds, on the record, that the conditions set forth in s. 938.34 (4m) have been met.

4. Placement with department. (a) When the juvenile is placed with the department, the department may, after an examination under s. 938.355 (2d) (b) 1., place the juvenile in a juvenile correctional facility or a secured residential care center for children and youth or on aftercare supervision, either immediately or after a period of placement in a juvenile correctional facility or a secured residential care center for children and youth. The department shall send written notice of the change in placement to the parent, guardian, legal custodian, county department designated under s. 938.34 (4n), if any, and committing court. If the department places a juvenile in a Type 2 juvenile correctional facility operated by a child welfare agency, the department shall reimburse the child welfare agency at the rate established under s. 49.343 that is applicable to the type of placement that the child welfare agency is providing for the juvenile. A juvenile who is placed in a Type 2 juvenile correctional facility or a secured residential care center for children and youth remains under the supervision of the department, remains subject to the rules and discipline of that department, and is considered to be in custody, as defined in s. 946.42 (1) (a).

(b) Documentation of basis of findings. The court shall make the findings under par. (a) and 3. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) Permanency plan hearing. If the court finds under par. (a) or (b) that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

(d) Subject to subd. 2., the court shall order the county department or the agency primarily responsible for implementing the dispositional order to conduct a diligent search in order to locate and provide notice of the information specified in s. 938.21 (5) (e) 2. a. to e. to all relatives of the juvenile named under sub. (1) (c) 2m. or (2m) (bm) and to all adult relatives, as defined in s. 938.21 (5) (e) 1., of the juvenile within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The court may also order the county department or agency to conduct a diligent search in order to locate and provide notice of that information to all other adult individuals named under sub. (1) (c) 2m. or (2m) (bm) within 30 days after the juvenile is removed from the custody of the juvenile’s parent unless the juvenile is returned to his or her home within that period. The county department or agency may not provide that notice to a person named under sub. (1) (c) 2m. or (2m) (bm) to an adult relative if the county department or agency has reason to believe that it would be dangerous to the juvenile or to the parent if the juvenile were placed with that person or adult relative.

2. Subdivision 1. does not apply if the search required under subd. 1. was previously conducted and the notice required under subd. 1. was previously provided under s. 938.21 (5) (e) 2. or 938.355 (2) (cm) 1.

3. Placement in juvenile correctional facility. Subject to subs. (4) (b) and (c) and (5) (e), if the proposed change in placement would involve placing a juvenile in a juvenile correctional facility or a secured residential care center for children and youth, notice shall be given as provided in sub. (1) (am) 1. A hearing shall be held, unless waived by the juvenile, parent, guardian, and legal custodian, before the court makes a decision on the request. The juvenile is entitled to counsel at the hearing, and any party opposing or favoring the proposed new placement may present relevant evidence and cross-examine witnesses. The proposed new placement may be approved only if the court finds, on the record, that the conditions set forth in s. 938.34 (4m) have been met.

4. Placement with department. (a) When the juvenile is placed with the department, the department may, after an examination under s. 938.355 (2d) (b) 1., place the juvenile in a Type 2 juvenile correctional facility.
agency, may place the juvenile in a Type 1 juvenile correctional facility under the supervision of the department, without a hearing under sub. (1) (am) 2.

2. If a juvenile whom the court has placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) violates a condition of his or her placement in the Type 2 residential care center for children and youth, the child welfare agency operating the Type 2 residential care center for children and youth shall notify the county department that has supervision over the juvenile and, if the county department agrees to a change in placement under this subdivision, the child welfare agency shall notify the department, and the department, after consulting with the child welfare agency, may place the juvenile in a Type 1 juvenile correctional facility under the supervision of the department, without a hearing under sub. (1) (am) 2, for not more than 10 days. If a juvenile is placed in a Type 1 juvenile correctional facility under this subdivision, the county department that has supervision over the juvenile shall reimburse the child welfare agency operating the Type 2 residential care center for children and youth in which the juvenile was placed at the rate established under s. 49.343, and that child welfare agency shall reimburse the department at the rate specified in s. 301.26 (4) (d) 2. or 3., whichever is applicable, for the cost of the juvenile’s care while placed in a Type 1 juvenile correctional facility.

3. The child welfare agency operating the Type 2 juvenile correctional facility or Type 2 residential care center for children and youth shall send written notice of a change in placement under sub. 1. or 2. to the parent, guardian, legal custodian, county department, and committing court.

4. A juvenile may seek review of a decision of the department under subd. 1. or 2. only by the common law writ of certiorari.

(c) 1. If a juvenile is placed in a Type 2 juvenile correctional facility operated by a child welfare agency under par. (a) and it appears that a less restrictive placement would be appropriate for the juvenile, the department, after consulting with the child welfare agency that is operating the Type 2 juvenile correctional facility, may place the juvenile in a less restrictive placement, and may return the juvenile to the Type 2 juvenile correctional facility without a hearing under sub. (1) (am) 2. The rate for each type of placement shall be established by the department of children and families, in consultation with the department, in the manner provided in s. 49.343.

2. If a juvenile is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) and it appears that a less restrictive placement would be appropriate for the juvenile, the child welfare agency operating the Type 2 residential care center for children and youth shall notify the county department that has supervision over the juvenile and, if the county department agrees to a change in placement under this subdivision, the child welfare agency may place the juvenile in a less restrictive placement. A child welfare agency may also, with the agreement of the county department that has supervision over the juvenile who is placed in a less restrictive placement under this subdivision, return the juvenile to the Type 2 residential care center for children and youth without a hearing under sub. (1) (am) 2. The rate for each type of placement shall be established by the department of children and families, in consultation with the department, in the manner provided in s. 49.343.

3. The child welfare agency operating the Type 2 juvenile correctional facility or Type 2 residential care center for children and youth shall send written notice of a change in placement under subd. 1. or 2. to the parent, guardian, legal custodian, county department, and committing court.

4. A juvenile may seek review of a decision of the department or county department under subd. 1. or 2. only by the common law writ of certiorari.

(4d) PROHIBITED PLACEMENTS BASED ON HOMICIDE OF PARENT.

(a) Except as provided in par. (b), the court may not change a juvenile’s placement to a placement in the home of a person who has been convicted of the homicide of a parent of the juvenile under s. 940.01 or 940.05, if the conviction has not been reversed, set aside, or vacated.

(b) Paragraphs (a) and (am) do not apply if 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.

(4g) AFTERCARE PLAN. (a) Not later than 120 days after the date on which the juvenile is placed in a juvenile correctional facility or a secured residential care center for children and youth, or within 30 days after the date on which the department requests the aftercare plan, whichever is earlier, the aftercare provider designated under s. 938.34 (4n) shall prepare an aftercare plan for the juvenile. If the designated aftercare provider is a county department, that county department shall submit the aftercare plan to the department within the applicable time period specified in this paragraph, unless the department waives the time period under par. (b).

(b) The department may waive the time period within which an aftercare plan must be prepared and submitted under par. (a) if the department anticipates that the juvenile will remain in the juvenile correctional facility or secured residential care center for children and youth for a period exceeding 8 months or if the juvenile is subject to s. 48.366 or 938.183. If the department waives that time period, the designated aftercare provider shall prepare the aftercare plan within 30 days after the date on which the department requests the aftercare plan.

(c) An aftercare plan shall include all of the following:

1. The minimum number of supervisory contacts per week.
2. The conditions, if any, under which the juvenile’s aftercare status may be revoked.
3. Services or programming to be provided to the juvenile while on aftercare.
4. The estimated length of time that aftercare supervision and services shall be provided to the juvenile.

(d) A juvenile may be released from a juvenile correctional facility or a secured residential care center for children and youth whether or not an aftercare plan has been prepared under this subsection.

(4m) RELEASE TO AFTERCARE SUPERVISION. The department shall try to release a juvenile to aftercare supervision under sub. (4) within 30 days after the date the department determines the juvenile is eligible for the release.

(5) REVOCATION OF AFTERCARE SUPERVISION. (a) The department or a county department, whichever has been designated as a juvenile’s aftercare provider, may revoke the aftercare status of that juvenile. Prior notice of a change in placement under sub. (1) (am) 1. is not required.

(b) A juvenile on aftercare status may be taken into custody only as provided in ss. 938.19 to 938.21 and 938.355 (6d) (b).

(c) The juvenile is entitled to representation by counsel at all stages of the revocation proceeding.

(d) A hearing on the revocation shall be conducted by the division of hearings and appeals in the department of administration within 30 days after the juvenile is taken into custody for an alleged violation of a condition of the juvenile’s aftercare supervision. This time period may be waived only upon the agreement of the aftercare provider, the juvenile, and the juvenile’s counsel.
(e) If the hearing examiner finds that the juvenile has violated a condition of aftercare supervision, the hearing examiner shall determine whether confinement in a juvenile correctional facility or a secured residential care center for children and youth is necessary to protect the public, to provide for the juvenile’s rehabilita-
tion, or to not depreciate the seriousness of the violation.

(f) Review of a revocation decision shall be by certiorari to the court that placed the juvenile in the juvenile correctional facility or secured residential care center for children and youth.

(g) The department shall promulgate rules setting standards to be used by a hearing examiner to determine whether to revoke a juvenile’s aftercare status. The standards shall specify that the burden is on the department or county department seeking revocation to show by a preponderance of the evidence that the juvenile violated a condition of aftercare supervision.

(5m) CHILD SUPPORT. (a) If a proposed change in placement would change a juvenile’s placement from a placement in the juvenile’s home to a placement outside the juvenile’s home, the court shall order the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile’s parent to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide that statement a document setting forth the percentage standard established by the department of children and families under s. 49.22 (9) and listing the factors under s. 301.12 (14) (c). If the juvenile is placed outside the juvenile’s home, the court shall determine the liability of the parent in the manner provided in s. 301.12 (14).

(b) If the court orders the juvenile’s parent to provide a statement of the income, assets, debts, and living expenses of the juvenile and juvenile’s parent to the court or if the court orders the juvenile’s parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department, the court shall also order the juvenile’s parent to provide that statement to the county department by a date specified by the court. The county 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 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 juvenile.

(6) DURATION OF ORDER. No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the juvenile’s home to a placement in a foster home, group home or residential care center for children and youth or in the home of a relative who is not a parent, the court may extend the expiration date of the original order to the date on which the juvenile attains 18 years of age, to the date that is one year after the date of the change in placement order, or, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, to the date on which the juvenile attains 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement in a foster home, group home, or residential care center for children and youth or in the home of a relative to a placement in the juvenile’s home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237, 1999 a. 9, 103; 2001 a. 16, 103, 109; 2005 a. 344; 2007 a. 20, 199; 2009 a. 28, 79, 94; s. 13 921 (b) (m) 2.

Cross-reference: See also ch. DOC 393, Wis. adm. code.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile’s placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a dispositional order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a dispositional order when part of the dispositional order has been imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 3d 20, 724 N.W.2d 665, 06−0555.

938.36 Payment for services. (1) RESIDENTIAL SERVICES: PARENTAL DUTY TO SUPPORT. (a) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the juvenile by a disposition made under s. 938.183, 938.34 or 938.345 or by a change in placement under s. 938.357, the duty of the parent or guardian to provide support shall continue even though the legal custodian of the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the juvenile shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department of corrections, or a county department under s. 46.215, 46.22 or 46.23, shall be determined under s. 301.12 (14). Support payments for residential services, when purchased or otherwise funded by the department for youth services, or under s. 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent’s earning capacity, including information reported under s. 49.22 (2m) to the department of children and families, or the county child support agency, under s. 59.53 (5). If the court has insufficient information with which to determine the amount of support, the court shall order the juvenile’s parent to furnish a statement of the income, assets, debts, and living expenses of the juvenile and the juvenile’s parent, if the parent has not already done so, to the court within 10 days after the court’s order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) SERVICES OR TREATMENT; COUNTY PAYMENT; PARENTAL CONTRIBUTION. If a juvenile whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological, or psychiatric treatment by order of the court, the court may order the county to pay for those services or treatment. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the juvenile as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 301.03 (18).

(3) SERVICES PROVIDED BY SCHOOL DISTRICT. In determining county liability, this section does not apply to services specified in ch. 115.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 1977 a. 27, 35, 80, 205, 237, 1999 a. 9, 103; 2001 a. 16, 103, 109; 2005 a. 344; 2007 a. 20, 199; 2009 a. 28, 79, 94; s. 13 921 (b) (m) 2.

Cross-reference: See also ch. DOC 393, Wis. adm. code.

Section 938.355 provides a variety of sanctions for juveniles who have violated their dispositional orders. Section 938.357 enumerates the ways in which a juvenile’s placement may be changed. Nothing in either statute indicates that it is to be the exclusive mechanism for violation of a dispositional order. Section 938.34 (16) specifically allows an alternative procedure for dealing with violations of a dispositional order when part of the dispositional order has been imposed and stayed. State v. Richard J. D. 2006 WI App 242, 297 Wis. 3d 20, 724 N.W.2d 665, 06−0555.
48 or municipal court may order the parent to pay for the alcohol and other drug abuse services. If the parent consents to provide alcohol and other drug abuse services for a juvenile through his or her health insurance or other 3rd−party payments but the health insurance provider or other 3rd−party payer refuses to provide the alcohol and other drug abuse services the court assigned to exercise jurisdiction under this chapter and ch. 48 or municipal court may order the health insurance provider or 3rd−party payer to pay for the alcohol and other drug abuse services in accordance with the terms of the parent’s health insurance policy or other 3rd−party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, including piloted counties under s. 938.547.

(a) 1. If a court assigned to exercise jurisdiction under this chapter and ch. 48 in a pilot county under s. 938.547 finds that payment cannot be attained under par. (a), the court may order payment under par. (b).

2. If a court assigned to exercise jurisdiction under this chapter and ch. 48 in a county that is not a pilot county under s. 938.547 finds that payment cannot be attained under par. (a), the court may order payment under s. 938.34 (6) (ar) or 938.36.

3. If a municipal court finds that payment cannot be attained under par. (a), the municipal court may order the municipality over which the municipal court has jurisdiction to pay for any alcohol and other drug abuse services ordered by the municipal court.

(b) 1. In piloted counties under s. 938.547, in addition to ordering payment under par. (a), the court assigned to exercise jurisdiction under this chapter and ch. 48 may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the juvenile’s county of legal residence to pay for the alcohol and other drug abuse services whether or not custody has been taken from the parent.

2. A county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services under this paragraph, the provision of the service is subject to conditions specified in ch. 51.

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


938.362 Payment for certain special treatment or care services. (1) DEFINITION. In this section, “special treatment or care” has the meaning given in s. 938.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) APPLICABILITY. This section applies to the payment of court−ordered special treatment or care under s. 938.34 (6) (a) or (am), whether or not custody has been taken from the parent.

(3) PAYMENT BY PARENT OR INSURER. If a juvenile’s parent neglects, refuses, or is unable to provide court−ordered special treatment or care for the juvenile through his or her health insurance or other 3rd−party payments, notwithstanding s. 938.36 (3), the court may order the parent to pay for the court−ordered special treatment or care. If the parent consents to provide court−ordered special treatment or care for a juvenile through his or her health insurance or other 3rd−party payments but the health insurance provider or other 3rd−party payer refuses to provide the special treatment or care, the court may order the health insurance provider or 3rd−party payer to pay the special treatment or care in accordance with the terms of the parent’s health insurance policy or other 3rd−party payment plan.
and that person or agency is not the county department, the court shall also order the juvenile’s parent to provide that statement to the county department by a date specified by the court. The county 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 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 juvenile.

(1m) EVIDENCE AND STATEMENTS. If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent or other physical custodian described in s. 48.62 (2) of the juvenile a right to be heard at the hearing by permitting the foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent or other physical custodian who receives notice of a hearing under sub. (1) (a) and a right to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

(2) REVISION OF SUPPORT. If the court revises the amount of child support to be paid by a parent under the dispositional order for the care and maintenance of the parent’s juvenile who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent under s. 301.12 (14).


938.364 Dismissal of certain dispositional orders. A juvenile, the juvenile’s parent, guardian, or legal custodian, or the district attorney or corporation counsel in the county in which the dispositional order was entered may request the court to dismiss an order under s. 938.342 (2) if the juvenile has been returned to a foster home or other place of habitation.

History: 1995 a. 77; 2005 a. 344.

938.365 Extension of orders. (1) DATE ON WHICH JUVENILE PLACED OUTSIDE HOME. In this section, a juvenile is considered to have been placed outside of his or her home on the date on which the juvenile was first removed from his or her home, except that a juvenile who was removed from his or her home and first placed in a juvenile detention facility, a juvenile correctional facility, or a secured residential care center for children and youth for 60 days or more and then moved to a nonsecure out–of–home placement is considered to have been placed outside of his or her home on the date on which the juvenile was moved to the nonsecure out–of–home placement.

(1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal custodian, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered, the court on its own motion, or, if the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7m), the Indian juvenile’s Indian custodian may request an extension of an order under s. 938.355. The request shall be submitted to the court that entered the order. An order under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other orders or portions of orders under s. 938.355 may be extended only as provided in this section.

(2) NOTICE. No order may be extended without a hearing. The court shall provide notice of the time and place of the hearing to the juvenile [or the juvenile’s guardian ad litem or counsel], the juvenile’s parent, guardian, and legal custodian, all [of the] parties present at the original hearing, the juvenile’s foster parent or other physical custodian described in s. 48.62 (2), and the district attorney or corporation counsel in the county in which the dispositional order was entered. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall also notify the Indian juvenile’s Indian custodian and, if that juvenile is placed outside the home of his or her parent or Indian custodian in the statutorily defined Indian juvenile’s tribe.

NOTE: Sub. (2) is shown as repealed and recreated by 2009 Wis. Act 94, s. 371. Act 94, s. 371, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 143. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 371, but that was deleted or replaced by Act 79, s. 143, is shown in brackets. Correlate legislation is pending.

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

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

1. A copy of the report of the review panel under s. 938.338 (5), if any, and a response to the report from the agency primarily responsible for providing services to the juvenile.

2. An evaluation of the juvenile’s adjustment to the placement and of any progress the juvenile has made, suggestions for amendment of the permanency plan, and specific information about the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the juvenile’s placement.

3. If the juvenile has been placed outside of his or her home in a foster home, group home, nonsecure residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out–of–home placement or the first 6 months of any period during which the juvenile was returned to his or her home for a trial home visit, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the juvenile. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the juvenile and whether or not the juvenile should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the juvenile be registered with the adoption information exchange or report the reason why registering the juvenile is contrary to the best interest of the juvenile.

4. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful.

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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219. except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?*
sible for providing services to the juvenile shall present as evidence specific information showing that the person or agency has made reasonable efforts to achieve the goal of the juvenile’s permanency plan[,] including, if appropriate, through an out-of-state placement[]. If an Indian juvenile is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for providing services to the Indian juvenile shall also present as evidence specific information showing that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful.

NOTE: Subd. 1. is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 139.22 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

1m. The court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the person or agency primarily responsible for providing services to the juvenile to achieve the goal of the juvenile’s permanency plan[, including, if appropriate, through an out-of-state placement[]. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the findings of fact shall also include a finding that active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the Indian juvenile’s family and that those efforts have proved unsuccessful. An order shall be issued under s. 938.355.

NOTE: Subd. 1m. is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 139.22 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

1r. a. If the juvenile is placed outside of his or her home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, the person or agency primarily responsible for providing services to the juvenile shall present as evidence specific information showing that the agency has made reasonable efforts to place the juvenile in a placement that enables the sibling group to remain together, unless the court has determined that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the agency shall present as evidence specific information showing that the agency has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court has determined that such visitation or interaction would be contrary to the safety or well-being of the juvenile.

b. If the juvenile is placed outside the home and if the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been placed outside the home, the findings of fact shall include a finding as to whether reasonable efforts have been made by the agency primarily responsible for providing services to the juvenile to place the juvenile in a placement that enables the sibling group to remain together, unless the court has determined that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the findings of fact shall include a finding as to whether reasonable efforts have been made by the agency to provide for frequent visitation or other ongoing interaction between the juvenile and the siblings, unless the court has determined that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

NOTE: Subd. 1r. was created as subd. 1m. by 2009 Wis. Act 79 and renumbered to subd. 1r. by the legislative reference bureau under s. 139.95 (1) (b) 2.

2. If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the juvenile is not required to make reasonable efforts with respect to the parent to make it possible for the juvenile to return safety to his or her home.

NOTE: Subd. 1r. was created as subd. 1m. by 2009 Wis. Act 79 and renumbered to subd. 1r. by the legislative reference bureau under s. 139.95 (1) (b) 2.

3. The court shall make the findings under subd. 1m. relating to reasonable efforts to achieve the goal of the juvenile’s permanency plan and the findings under subd. 2. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the order issued under s. 938.355. An order that merely references subd. 1m. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

(ad) If the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile.

NOTE: Par. (ad) is shown as repealed and reenacted by 2009 Wis. Act 94, s. 376. Act 94, s. 376, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 151. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 376, but that was replaced by Act 79, s. 151, is shown in square brackets and the language that replaced it in Act 79 is shown in curly brackets. Corrective legislation is pending.

(b) If a juvenile has been placed outside the home under s. 938.345 and an extension is ordered under this subsection, the court shall state in the record the reason for the extension.

3. WAIVER OF APPEARANCE. The appearance of any juvenile may be waived by consent of the juvenile, counsel or guardian ad litem.

4. DISPOSITIONS TO BE CONSIDERED. The court shall determine which dispositions are to be considered for extensions.

5. DURATION OF EXTENSION. Except as provided in s. 938.368, an order under this section that continues the placement of a juvenile in his or her home or that extends an order under s. 938.34 (4d), (4h), (4m), or (4n) shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 938.368, an order under this section that continues the placement of a juvenile in a foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall be for a specified length of time not to exceed the date on which the juvenile attains 18 years of age, one year after the date on which the order is granted, or, if the juvenile is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before attaining 19 years of age, the date on which the juvenile attains 19 years of age, whichever is later.

6. HEARINGS CONDUCTED AFTER ORDER TERMINATES. If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances under s. 938.315 (1). The court shall grant appropriate relief as provided in s. 938.315 (3) with respect to any request to extend a dispositional order on which a hearing is held solely on the basis of receiving that notice and having [the opportunity] [a right] to be heard.

NOTE: Par. (ag) is shown as repealed and reenacted by 2009 Wis. Act 94, s. 376. Act 94, s. 376, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 151. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 376, but that was replaced by Act 79, s. 151, is shown in square brackets and the language that replaced it in Act 79 is shown in curly brackets. Corrective legislation is pending.

NOTE: Subd. 1r. was created as subd. 1m. by 2009 Wis. Act 79 and renumbered to subd. 1r. by the legislative reference bureau under s. 139.22 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

NOTE: Subd. 1m. is shown as affected by 3 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 139.22 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

NOTE: Subd. 1r. was created as subd. 1m. by 2009 Wis. Act 79 and renumbered to subd. 1r. by the legislative reference bureau under s. 139.95 (1) (b) 2.
(7) CHANGES IN PLACEMENT NOT PERMITTED. Nothing in this section may be construed to allow any changes in placement or revocation of aftercare supervision. Revocation and other changes in placement may take place only under s. 938.357.


A dispositional order may be extended without a finding of dangerousness. [cites former s. 48.365] In Interest of R.E.H. 101 Wis. 2d 647, 305 N.W.2d 162 (Ct. App. 1981).

An extension under sub. (6) [former s. 48.3650] does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis. 2d 567, 326 N.W.2d 762 (1982).

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18 during the extension period. [cites former s. 48.365] In Interest of W.P. 153 Wis. 2d 50, 449 N.W.2d 615 (1990).

After a juvenile’s dispositional order expires, a circuit court may not grant a 30-day temporary extension of the order under sub. (6). The statute does not allow for an extension by implication, by inference, or after the fact. When no temporary extension was granted prior to the expiration of the dispositional order, the circuit court could not act with respect to the juvenile once the dispositional order expired. State v. Michael S., Jr. 2003 WI 82, 282 Wis. 2d 1, 698 N.W.2d 673, 03−2934.

938.368 Continuation of dispositional orders. (1) TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 938.355 or an extension order under s. 938.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

(2) PLACEMENT WITH GUARDIAN. If a juvenile’s placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the juvenile while a dispositional order under s. 938.345, a revision order under s. 938.363, or an extension order under s. 938.365 is in effect with respect to the juvenile, the dispositional order, revision order, or extension order shall remain in effect until the earliest of the following:

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

(b) A court enters a change in placement order under s. 938.357.

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

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

History: 1995 a. 77; 1997 a. 80; 2005 a. 344.

938.37 Costs. (1) JUVENILE COURT. A court assigned to exercise jurisdiction under this chapter and ch. 48 may not impose costs, fees, or surcharges under ch. 814 against a juvenile under 14 years of age. A court may impose costs, fees, and surcharges under ch. 814 against a juvenile 14 years of age or older.

(3) CIVIL AND CRIMINAL COURTS. Notwithstanding sub. (1), courts of civil and criminal jurisdiction exercising jurisdiction under s. 938.17 may assess the same costs, fees, and surcharges imposed under ch. 814 against juveniles as they may assess against adults, except that witness fees may not be charged to the juvenile.

History: 1995 a. 77; 1997 a. 80; 2005 a. 344.

938.371 Access to certain information by substitute care provider. (1) MEDICAL INFORMATION. If a juvenile is placed in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent, including a placement under s. 938.205 or 938.21, the agency, as defined in s. 938.38 (1) (a), that placed the juvenile or arranged for the placement of the juvenile shall provide the following information to the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of an HIV test, as defined in s. 252.01 (2m), of the juvenile as provided under s. 252.15 (3m) (d) 15., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility of the confidentiality requirements under s. 252.15 (6).

NOTE: Par. (a) is shown as affected by 2009 Wis. Act 28 and 2009 Wis. Act 209 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(b) Results of any tests of the juvenile to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan.

(c) Any other medical information concerning the juvenile that is necessary for the care of the juvenile.

(3) OTHER INFORMATION. At the time of placement of a juvenile in a foster home, group home, residential care center for children and youth, or juvenile correctional facility or in the home of a relative other than a parent or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 938.38 (1) (a), responsible for preparing the juvenile’s permanency plan shall provide to the foster parent, relative, or operator of the group home, residential care center for children and youth, or juvenile correctional facility information contained in the court report submitted under s. 938.33 (1) or 938.365 (2) or permanency plan submitted under s. 938.355 (2e) or 938.38 relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the juvenile.

(b) Any involvement of the juvenile in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group.

(c) Any involvement of the juvenile in any activities that are harmful to the juvenile’s physical, mental, or moral well−being.

(d) Any involvement of the juvenile, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, 948.025, or 948.085, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the juvenile or for the protection of any person living in the foster home, group home, residential care center for children and youth, or juvenile correctional facility.

(e) The religious affiliation or beliefs of the juvenile.

(4) DISCLOSURE BEFORE PLACEMENT PERMITTED. Subsection (1) does not preclude an agency, as defined in s. 48.38 (1) (a), that is arranging for the placement of a juvenile from providing the information specified in sub. (1) (a) to (c) to a person specified in sub. (1) (intro.) before the time of placement of the juvenile. Subsection (3) does not preclude an agency, as defined in s. 48.38 (1) (a), responsible for preparing a juvenile’s court report or permanency plan from providing the information specified in sub. (3) (a) to (e) to a person specified in sub. (3) (intro.) before the time of placement of the juvenile.

(5) CONFIDENTIALITY OF INFORMATION. Except as permitted under s. 252.15 (6), a foster parent, treatment foster parent, relative, or operator of a group home, residential care center for children and youth, or juvenile correctional facility that receives any information under sub. (1) or (3), other than the information described in sub. (3) (e), shall keep the information confidential and may disclose that information only for the purposes of provid-
ing care for the juvenile or participating in a court hearing or permanency plan review concerning the juvenile.

938.373 Medical authorization. (1) AUTHORIZATION BY COURT. The court assigned to exercise jurisdiction under this chapter and ch. 48 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 48 determines that reasonable cause exists for the services and that the juvenile is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 48 and, except as provided in s. 938.296 (4) and (5), consents.

(2) ABORTION; JUDICIAL WAIVER OF PARENTAL CONSENT REQUIREMENT. Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

SUBCHAPTER VII
PERMANENCY PLANNING; RECORDS

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

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

(b) “Agency” means the department, a county department or a licensed child welfare agency that is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(c) “Permanency plan” means a plan designed to ensure that the juvenile is returned safely to his or her home if any of the circumstances under s. 938.355 (2d) (b) 1. to 4. apply to that parent.

(d) “Permanency plan” means a plan designed to ensure that the juvenile is returned safely to his or her home if any of the circumstances under s. 938.355 (2d) (b) 1. to 4. apply to that parent.

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each juvenile living in a foster home, group home, residential care center for children and youth, the agency that placed the juvenile or the agency that placed the juvenile or the juvenile in a juvenile correctional facility or a secured residential care center for children and youth, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(a) If the juvenile is living more than 60 miles from his or her home, documentation that placement within 60 miles of the juvenile is or was most recently enrolled.

(b) The date on which the juvenile was removed from his or her home and the date on which the juvenile was placed in out-of-home care.

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

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

(3) TIME. Subject to sub. (4m) (a), the agency shall file the permanency plan with the court within 60 days after the date on which the juvenile was first removed from his or her home, except under either of the following conditions:

NOTE: Sub. (3) (intro.) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(a) If the juvenile is alleged to be delinquent and is being held in a juvenile detention facility, juvenile portion of a county jail, or shelter care facility, and the agency intends to recommend that the juvenile be placed in a juvenile correctional facility or a secured residential care center for children and youth, the agency is not required to submit the permanency plan unless the court does not accept the recommendation of the agency. If the court places the juvenile in any facility outside of the juvenile’s home other than a juvenile correctional facility or a secured residential care center for children and youth, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(b) If the juvenile is held for less than 60 days in a juvenile detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the juvenile is returned to his or her home within that period.

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

(a) The name, address, and telephone number of the juvenile’s parent, guardian, and legal custodian.

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

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

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

(5) CONTENT OF VISITATION. If a decision is made not to provide for that visitation or interaction, the permanency plan shall include a statement as to why that visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

(6) PUBLIC ACCESS TO RECORDS. The records of the juvenile justice code are available to any person who requests access to the records.

History:

938.387 WAFER

(1) WAIVER

(a) If the juvenile is alleged to be delinquent and is being held in a juvenile detention facility, juvenile portion of a county jail, or shelter care facility, and the agency intends to recommend that the juvenile be placed in a juvenile correctional facility or a secured residential care center for children and youth, the agency is not required to submit the permanency plan unless the court does not accept the recommendation of the agency. If the court places the juvenile in any facility outside of the juvenile’s home other than a juvenile correctional facility or a secured residential care center for children and youth, the agency shall file the permanency plan with the court within 60 days after the date of disposition.

(b) If the juvenile is held for less than 60 days in a juvenile detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the juvenile is returned to his or her home within that period.

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

(a) The name, address, and telephone number of the juvenile’s parent, guardian, and legal custodian.

(b) The date on which the juvenile was removed from his or her home and the date on which the juvenile was placed in out-of-home care.

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

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

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
3. The grade level in which the juvenile is or was most recently enrolled and all information that is available concerning the juvenile’s grade level performance.

4. A summary of all enrolled education records relating to the juvenile that are relevant to any education goals included in the education services plan prepared under s. 938.33 (1) (e).

(dm) If as a result of the placement the juvenile has been or will be transferred from the school in which the juvenile is or most recently was enrolled, documentation that a placement that would maintain the juvenile in that school is either unavailable or inappropriate or that a placement that would result in the juvenile’s transfer to another school would be in the juvenile’s best interests.

(dr) Medical information relating to the juvenile, including all of the following:

1. The names and addresses of the juvenile’s physician, dentist, and any other health care provider that is or was previously providing health care services to the juvenile.

2. The juvenile’s immunization record, including the name and date of each immunization administered to the juvenile.

3. Any known medical condition for which the juvenile is receiving medical care or treatment and any known serious medical condition for which the juvenile has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the juvenile and the name of any medication that causes the juvenile to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the juvenile and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the juvenile or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the juvenile, the juvenile’s family, and the juvenile’s foster parent, the operator of the facility where the juvenile is living, or the relative with whom the juvenile is living to carry out the dispositional order, including services planned to accomplish all of the following:

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

2. Meet the juvenile’s physical, emotional, social, educational and vocational needs.

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

(g) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 938.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the juvenile to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the juvenile to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a juvenile’s permanency plan:

1. Return of the juvenile to the juvenile’s home.

2. Placement of the juvenile for adoption.

3. Placement of the juvenile with a guardian.

4. Permanent placement of the juvenile with a fit and willing relative.

5. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

(fm) If the goal of the permanency plan is to place the juvenile for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal, including, if appropriate, through an out-of-state placement.

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

(h) If the juvenile is 15 years of age or older, an independent living plan describing the programs and services that are or will be provided to assist the juvenile in preparing for the transition from out-of-home care to independent living. The plan shall include all of the following:

1. The anticipated age at which the juvenile will be discharged from out-of-home care.

2. The anticipated amount of time available in which to prepare the juvenile for the transition from out-of-home care to independent living.

3. The anticipated location and living situation of the juvenile on discharge from out-of-home care.

4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the juvenile in preparing for the transition from out-of-home care to independent living.

5. The rationale for each program or service that is or will be provided to assist the juvenile in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(i) A statement as to whether the juvenile’s age and developmental level are sufficient for the court to consult with the juvenile at the permanency plan determination hearing under sub. (4m) (c) or at the permanency plan hearing under sub. (5m) (c) 2. or for the court or panel to consult with the juvenile at the permanency plan review under sub. (5) (bm) 2. and, if a decision is made that it would not be age appropriate or developmentally appropriate for the court to consult with the juvenile, a statement as to why consultation with the juvenile would not be appropriate.

(jm) If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), all of the following:

1. The name, address, and telephone number of the Indian juvenile’s Indian custodian and tribe.

2. A description of the remedial services and rehabilitation programs offered under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian juvenile’s family.

3. A statement as to whether the Indian juvenile’s placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from that order.

NOTE: Par. (jm) was created par. (i) by 2009 Wis. Act 94 and renumbered to par. (jm) by the legislative reference bureau under s. 13392 (1)(bm)2.

(j) If the juvenile is placed in the home of a relative or other person described in s. 48.623 (1) (b) 1. who will be receiving subsidized guardianship payments, a description of all of the following:

1. The steps the agency has taken to determine that it is not appropriate for the juvenile to be returned to his or her home or to be adopted.

2. If a decision has been made not to place the juvenile and his or her siblings, as defined in par. (br) 1. in a joint placement, the reasons for separating the juvenile and his or her siblings during the placement.

3. The reasons why a permanent placement with a fit and willing relative or other person described in s. 48.623 (1) (b) 1. through a subsidized guardianship arrangement is in the best inter-
(d) The court shall give a foster parent[,] or other physical custodian described in s. 48.62 (2),[,] operator of a facility, or relative who is notified of a hearing under par. (b) a right to be heard at the hearing by permitting the foster parent[,] or other physical custodian[,] operator, or relative to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. The foster parent, treatment foster parent, or other physical custodian[,] operator of a facility, or relative does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and right to be heard.

NOTE: Par. (d) is shown as merged by the legislative reference bureau under s. 13.92 (2) (i) from s. 938.38 (4m) (d), as created by 2009 Wis. Act 79, s. 158, as affected by Act 79, s. 159, and s. 938.38 (4m) (c), as created by 2009 Wis. Act 94, s. 381, as affected by Act 94, s. 383. Each “or” in square brackets is made unnecessary by the merger. Punctuation in curly brackets was not included in either act, but is required for correct punctuation. Corrective legislation is pending.

(5) PLAN REVIEW (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the juvenile was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the juvenile is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the juvenile was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review, the court shall hold a hearing under sub. (5m) to review the permanency plan.

The hearing may be instead of or in addition to the review under this subsection.

(ag) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the court that has been approved by the chief judge of the judicial administrative district to prepare the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for providing services to the juvenile or the parents of the juvenile whose permanency plan is the subject of the review.

NOTE: Par. (b) is shown as affected by 2009 Wis. Act 79, s. 159, and 2009 Wis. Act 94, s. 382, and as merged by the legislative reference bureau under s. 13.92 (2) (i). The material in square brackets was created in 79, but is inconsistent with, an independent agency that has been approved by the chief judge of the judicial administrative district to prepare the permanency plan.

The court or the agency shall notify the juvenile[,] if he or she is 10 years of age or older; the juvenile’s parent, guardian, and legal custodian[,] of the juvenile; [, and the juvenile’s] any foster parent or other physical custodian described in s. 48.62 (2) of the juvenile[,] the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living[,] and, if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe of the time, of the place, and purpose of the hearing, of the issues to be determined at the hearing, and of the fact that they have a right to be heard at the hearing.

NOTE: Par. (b) is shown as affected by 2009 Wis. Act 79, s. 159, and 2009 Wis. Act 94, s. 382, and as merged by the legislative reference bureau under s. 13.92 (2) (i). The material in square brackets was created in 79, but is inconsistent with, an independent agency that has been approved by the chief judge of the judicial administrative district to prepare the permanency plan. The punctuation in curly brackets was included in both acts.

The court or the agency shall notify the juvenile[,] if he or she is 10 years of age or older; the juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe of the date[,] time[,] and place[,] of the review, of the issues to be determined as part of the review, and of the fact that they may [submit written comments not less than 10 working days before the review] [have an opportunity to be heard at the review as provided in par. (b) (m) 1]. The court or agency shall notify the person representing the interests of the public, the juvenile’s counsel, the juvenile’s guardian ad litem of the date[,] time[,] place[,] and purpose[,] of the review, of the issues to be determined as part of the review, and of the fact that they may [submit written comments not less than 10 working days before the review] [have an opportunity to be heard at the review as provided in par. (b) (m) 1]. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the juvenile’s case record.

NOTE: Par. (b) (m) 1 is shown as repealed and recreated by 2009 Wis. Act 94, s. 384. Act 94, s. 384, did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 161. The bracketed material shows the changes.
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needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 384, but that was deleted or replaced by Act 79, s. 161, is shown in square brackets and material that was inserted by Act 79 but not included in Act 94 is shown in curly brackets. Corrective legislation is pending.

(bm) 1. A juvenile, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the review under par. (b) shall have a right to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review or by participating at the review. A person representing the interests of the public, counsel, or guardian ad litem who is provided notice of the review under par. (b) may have an opportunity to be heard at the review by submitting written comments relevant to the determinations specified in par. (c) not less than 10 working days before the date of the review. A foster parent, operator of a facility, or relative who receives notice of a hearing [review] under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the review is held solely on the basis of receiving that notice and right to be heard.

NOTE: The correct word is shown in brackets. Corrective legislation is pending.

2. If the juvenile’s permanency plan includes a statement under sub. (4) (i) indicating that the juvenile’s age and developmental level are sufficient for the court or panel to consult with the juvenile regarding the juvenile’s permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court or panel to consult with the juvenile, the court or panel determines that consultation with the juvenile would be in the best interests of the juvenile, the court or panel shall consult with the juvenile, in an age-appropriate and developmentally appropriate manner, regarding the juvenile’s permanency plan and any other matters the court or panel finds appropriate. If none of those circumstances apply, the court or panel may permit the juvenile’s caseworker, the juvenile’s counsel, or, subject to s. 938.235 (3) (a), the juvenile’s guardian ad litem to make a written or oral statement during the review, or to submit a written statement prior to the review, expressing the juvenile’s wishes, goals, and concerns regarding the permanency plan and those matters. If the court or panel permits such a written or oral statement to be made or submitted, the court or panel may nonetheless require the juvenile to be physically present at the review.

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

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

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

3. The extent of any efforts to involve appropriate service providers in addition to the agency’s staff in planning to meet the special needs of the juvenile and the juvenile’s parents.

4. The progress toward eliminating the causes for the juvenile’s placement outside of his or her home and toward returning the juvenile safely to his or her home or obtaining a permanent placement for the juvenile.

5. The date by which it is likely that the juvenile will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.

6. If the juvenile has been placed outside of his or her home, as described in s. 938.363 (1), in a foster home, group home, non-secured residential care center for children and youth, or shelter care facility for 15 of the most recent 22 months, not including any period during which the juvenile was a runaway from the out-of-home placement or the first 6 months of any period during which the juvenile was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the juvenile from any of the following:

a. Being returned safely to his or her home.

b. Having a petition for the involuntary termination of parental rights filed on behalf of the juvenile.

c. Being placed for adoption.

d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan[,] including, if appropriate, through an out-of-state placement{[.]}.

NOTE: Subd. 7. is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i). The comma in square brackets was removed by 2009 Wis. Act 185, but its reinsertion is required. The comma in curly brackets was inserted by 2009 Wis. Act 79, but is unnecessary. Corrective legislation is pending.

8. If the juvenile has one or more siblings, as defined in s. 938.38 (4) (br) 1., who have also been removed from the home, whether reasonable efforts were made by the agency to place the juvenile in a placement that enables the sibling group to remain together, unless the court or panel determines that a joint placement would be contrary to the safety or well-being of the juvenile or any of those siblings, in which case the court or panel shall determine whether reasonable efforts were made by the agency to provide for frequent visitation or other ongoing interaction between the juvenile and those siblings, unless the court or panel determines that such visitation or interaction would be contrary to the safety or well-being of the juvenile or any of those siblings.

8m. If the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), whether active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the Indian juvenile’s family, whether those efforts have proved unsuccessful, whether the Indian child’s placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the placement is not in compliance with that order, whether there is good cause, as described in s. 938.028 (6) (d), for departing from that order.

NOTE: Subd. 8m. was created as subd. 8. by 2009 Wis. Act 94 and renumbered to subd. 8m. by the legislative reference bureau under s. 13.92 (1) (bm) 2.

(d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the juvenile’s parent, guardian, and legal custodian, the person representing the interests of the public, the juvenile’s counselor, or, subject to s. 938.363 (1), the juvenile’s guardian ad litem, a copy of the permanency plan and any written comments submitted under par. (bm) 1. Notwithstanding s. 938.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the juvenile’s counselor, the juvenile’s guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe a copy of the permanency plan and any written comments submitted under par. (bm) 1. Notwithstanding s. 938.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the juvenile’s counselor, the juvenile’s guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe may have access to any other records concerning the juvenile for the purpose of participating in the review. A person permitted access to a juvenile’s records under this paragraph may not disclose any information from the records to any other person.

NOTE: Par. (d) is shown as affected by 2 acts of the 2009 Wisconsin legislature and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order; the juvenile or the juvenile’s counselor or guardian ad litem; the person representing the interests of the public; the juvenile’s parent, guardian, or legal custodian; the juvenile’s foster parent or the operator of the facility where the juvenile is living[, or the relative with whom the juvenile is liv-
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(5m) **PERMANENCY PLAN HEARING.** (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the juvenile was first removed from the home and every 12 months after a previous hearing. All parties that have an opportunity to be heard at the hearing, of the time, place, and purpose of the hearing, the issues to be determined at the hearing, and of the fact that they shall have a right to be heard at the hearing as provided in par. (c) 1. and shall notify the juvenile’s counsel, the juvenile’s guardian ad litem, the agency that prepared the permanency plan, the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe; the court, to the juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe; the juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe; the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe; the juvenile’s foster parent, or other person who is provided notice of the hearing under this paragraph and shall provide a copy of those findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(b) Not less than 30 days before the date of the hearing, the court shall notify the juvenile; the juvenile’s parent, guardian, and legal custodian; and the juvenile’s foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe. The court shall make written findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(c) 1. A juvenile, parent, guardian, legal custodian, foster parent, operator of a facility, or relative who is provided notice of the hearing under par. (b) shall have a right to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A counsel, guardian ad litem, agency, or person representing the interests of the public who is provided notice of the hearing under par. (b) may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, operator of a facility, or relative who receives notice of a hearing under par. (b) and a right to be heard under this subdivision does not become a party to the proceeding on which the hearing was held solely on the basis of receiving that notice and right to be heard.

2. If the juvenile’s permanency plan includes a statement under sub. (4) (i) indicating that the juvenile’s age and developmental level are sufficient for the court to consult with the juvenile regarding the juvenile’s permanency plan or if, notwithstanding a decision under sub. (4) (i) that it would not be appropriate for the court to consult with the juvenile, the court determines that consultation with the juvenile would be in the best interests of the juvenile, the court shall consult with the juvenile, in an age-appropriate and developmentally appropriate manner, regarding the juvenile’s permanency plan and any other matters the court finds appropriate. If none of those circumstances apply, the court may permit the juvenile’s caseworker, the juvenile’s counsel, or, subject to s. 938.235 (3) (a), the juvenile’s guardian ad litem to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, expressing the juvenile’s wishes, goals, and concerns regarding the permanency plan and those matters. If the court permits such a written or oral statement to be made or submitted, the court may nonetheless require the juvenile to be physically present at the hearing.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) 1. to the court, to the juvenile’s parent, guardian, and legal custodian, to the person representing the interests of the public, to the juvenile’s counsel or guardian ad litem, and, if the juvenile is an Indian juvenile, to the relative with whom the juvenile is living; the person representing the interests of the public, and, if the juvenile is an Indian juvenile, the Indian juvenile’s Indian custodian and tribe. Notwithstanding s. 938.78 (2) (a), the person representing the interests of the public, the juvenile’s counsel or guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile’s Indian custodian and tribe. A written or oral statement from a person permitted access to a juvenile’s records under this paragraph may not disclose any information from the juvenile’s records to any other person.

**NOTE:** Par. (b) is shown as repealed and recreated by 2009 Wis. Act 94, s. 390. Act 94, s. 390 did not take cognizance of the repeal and recreation of the provision by 2009 Wis. Act 79, s. 170. The bracketed material shows the changes needed to give effect to the Act 79 changes. Material that was not changed by Act 94, s. 390, but that was deleted or replaced by Act 79, s. 170, is shown in square brackets and material that was inserted by Act 79 but not included in Act 94 is shown in curly brackets. Corrective legislation is pending.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the juvenile; the juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the person representing the interests of the public, and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile’s Indian custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the juvenile’s dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 938.363 or order a change in placement under s. 938.357, as appropriate.

**RULES.** The department shall promulgate rules establishing the following:

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of juveniles outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for juveniles to return safely to their homes if they have been placed outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of juveniles.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 82, 499 N.W.2d 219 (Ct. App. 1993).

NOTE: The above annotation cites to s. 48.38, the predecessor statute to s. 938.38.

938.39 Disposition by court bars criminal proceeding. Disposition by the court of any violation of state law within its jurisdiction under s. 938.12 bars any future criminal proceeding on the same matter in circuit court when the juvenile reaches the age of 17. This section does not affect criminal proceedings in circuit court that were transferred under s. 938.18.

History: 1995 a. 77; 2005 a. 344.

The revision of a previously entered dispositional order due to the juvenile’s participation in an armed robbery while subject to the order was not a “disposition” of the armed robbery charge, and the subsequent prosecution of the armed robbery charge in adult court did not violate s. 48.39 (now s. 938.39) or the constitutional protection against double jeopardy. State v. Stephens, 201 Wis. 2d 82, 548 N.W.2d 108 (Ct. App. 1996), 95–2103.

938.396 Records. (1) LAW ENFORCEMENT RECORDS. (a) Confidentiality. Law enforcement agency records of juveniles shall be kept separate from records of adults. Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed except under par. (b) or (c), sub. (1j) or (10), or s. 938.293 or by order of the court.

(b) Applicability. Paragraph (a) does not apply to any of the following:

1. The disclosure of information to representatives of the news media who wish to obtain information for the purpose of reporting news. A representative of the news media who obtains information under this subdivision may not reveal the identity of the juvenile involved.

2. The confidential exchange of information between a law enforcement agency and officials of the public or private school attended by the juvenile. A public school official who obtains information under this subdivision shall keep the information confidential as required under s. 118.125, and a private school official who obtains information under this subdivision shall keep the information confidential in a manner as required of a public school official under s. 118.125.

2m. The confidential exchange of information between a law enforcement agency and officials of the tribal school attended by the juvenile if the law enforcement agency determines that enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials to keep the information confidential in a manner as stringent as is required of a public school official under s. 118.125.

3. The confidential exchange of information between a law enforcement agency and another law enforcement agency. A law enforcement agency that obtains information under this subdivision shall keep the information confidential as required under par. (a) and s. 48.396 (1).

4. The confidential exchange of information between a law enforcement agency and a social welfare agency. A social welfare agency that obtains information under this subdivision shall keep the information confidential as required under ss. 48.78 and 938.78.

5. The disclosure of information relating to a juvenile 10 years of age or over who is subject to the jurisdiction of a court of criminal jurisdiction.

(c) Exceptions. Notwithstanding par. (a), law enforcement agency records of juveniles may be disclosed as follows:

1. If requested by the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer’s report, or if requested by the juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, provide the report to the parent, guardian, legal custodian or juvenile a copy of that report.

2. Upon the written permission of the parent, guardian or legal custodian of a juvenile who is the subject of a law enforcement officer’s report or upon the written permission of the juvenile, 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 juvenile in the written permission.

3. At the request of a school district administrator, administrator of a private school, or administrator of a tribal school, or designee of a school district administrator, private school administrator, or tribal school administrator, or on its own initiative, a law enforcement agency may, subject to official agency policy, provide to the school district administrator, private school administrator, or tribal school administrator or designee, for use as provided in s. 118.127, any information in its records relating to any of the following if the official agency policy specifies that the information may not be provided to an administrator of a tribal school or a tribal school administrator’s designee unless the governing body of the tribal school agrees that the information will be used by the tribal school as provided in s. 118.127 (2) [s. 118.127]:

a. The use, possession, or distribution of alcohol or a controlled substance or controlled substance analog by a juvenile enrolled in the public school district, private school, or tribal school.

b. The illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).

c. An act for which a juvenile enrolled in the school district, private school, or tribal school was taken into custody under s. 938.19 based on a law enforcement officer’s belief that the juvenile was committing or had committed a violation of any state or federal criminal law.

d. An act for which a juvenile enrolled in the public school district, private school, or tribal school was adjudged delinquent.

4. A law enforcement agency may enter into an interagency agreement with a school board, a private school, a tribal school, a social welfare agency, or another law enforcement agency providing for the routine disclosure of information under subs. (1) (b) 2. and 2m. and (c) 3. to the school board, private school, tribal school, social welfare agency, or other law enforcement agency.

5. If requested by a victim of a juvenile’s act, a law enforcement agency may, subject to official agency policy, disclose to the victim any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile’s parents. The victim may use and further disclose the information only for the purpose of recovering for the injury, damage or loss suffered as a result of the juvenile’s act.

6. If requested by the victim–witness coordinator, a law enforcement agency shall disclose to the victim–witness coordinator any information in its records relating to the enforcement of rights under the constitution, this chapter, s. 950.04 or the provision of services under s. 950.06 (1m), including the name and address of the juvenile and the juvenile’s parents. The victim–witness coordinator may use the information only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter, and ch. 950. The victim–witness coordinator may also use the information to disclose the name and address of the juvenile and the juvenile’s parents to the victim of the juvenile’s act.

7. If a juvenile has been ordered to make restitution for any injury, loss or damage caused by the juvenile and if the juvenile has failed to make that restitution within one year after the entry of the order, the insurer of the victim, as defined in s. 938.02 (20m) (a) 1., may request a law enforcement agency to disclose to the insurer any information in its records relating to the injury, loss or damage suffered by the victim, including the name and address of the juvenile and the juvenile’s parents, and the law enforcement
agency may, subject to official agency policy, disclose to the victim’s insurer that information. The insurer may use and further disclose the information only for the purpose of investigating a claim arising out of the juvenile’s act.

8. If requested by a fire investigator under s. 165.55 (15), a law enforcement agency may, subject to official agency policy, disclose to the fire investigator any information in its records relating to a juvenile as necessary for the fire investigator to pursue his or her investigation under s. 165.55. The fire investigator may use and further disclose the information only for the purpose of pursuing that investigation.

(d) Law enforcement access to school records. On petition of a law enforcement agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s. 118.125 (2) or (2m), for the purpose of pursuing an investigation of any alleged delinquent or criminal activity or on petition of a fire investigator under s. 165.55 (15) to review those pupil records for the purpose of pursuing an investigation under s. 165.55 (15), the court may order the school board of the school district, or the governing body of the private school, in which a juvenile is enrolled to disclose to the law enforcement agency or fire investigator the pupil records of that juvenile as necessary for the law enforcement agency or fire investigator to pursue the investigation. The law enforcement agency or fire investigator may use the pupil records only for the purpose of the investigation and may make the pupil records available only to employees of the law enforcement agency or fire investigator who are working on the investigation.

(1) LAW ENFORCEMENT RECORDS, COURT-ORDERED DISCLOSURE. (a) Any person who is denied access to a record under sub. (1) (a) or (10) may petition the court to order the disclosure of the record. 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) Subject to par. (bm), the court, on receipt of a petition, shall notify the juvenile, the juvenile’s counsel, the juvenile’s parents, and appropriate law enforcement agencies in writing of the petition. If any person notified objects to the disclosure, the court may order the law enforcement agency to take evidence relating to the petitioner’s need for the disclosure.

(bm) If the petitioner is seeking access to a record under sub. (1) (c) 3., the court shall, without notice or hearing, make the inspection and determinations specified in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile’s counsel, and the juvenile’s parents. Any of those persons may obtain a hearing on the court’s determinations by filing a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been shown for setting aside the order, the law enforcement agency shall disclose the juvenile’s record as ordered.

(c) The court shall make an inspection, which may be in camera, of the juvenile’s records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, it shall then determine whether the petitioner’s need for the information outweighs society’s interest in protecting its confidentiality. In making this determination, the court shall balance the following private and societal interests:

1. The petitioner’s interest in recovering for the injury, damage or loss he or she has suffered against the juvenile’s interest in rehabilitation and in avoiding the stigma that might result from disclosure.
2. The public’s interest in the redress of private wrongs through private litigation against the public’s interest in protecting the integrity of the juvenile justice system.
3. If the petitioner is a person who was denied access to a record under sub. (1) (c) 3., the petitioner’s legitimate educational interests, including safety interests, in the information against society’s interest in protecting its confidentiality.

(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 juvenile’s records. All records related to a decision under this subsection are confidential.

(2) COURT RECORDS; CONFIDENTIALITY. Records of the court assigned to exercise jurisdiction under this chapter and ch. 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books or deposited in files kept for that purpose only. Those records 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. 48 or as permitted under sub. (2g) or (10) or s. 48.396 (3) (b) or (c) 1.

(2g) CONFIDENTIALITY OF COURT RECORDS; EXCEPTIONS. Notwithstanding sub. (2), records of the court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2) may be disclosed as follows:

(a) Request of parent or juvenile. Upon request of the parent, guardian, or legal custodian of a juvenile who is the subject of a record a court assigned to exercise jurisdiction under this chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon request of the juvenile, if 14 years of age or over, the court that is the custodian of the record shall open for inspection by the parent, guardian, legal custodian, or juvenile its records relating to that juvenile, unless that court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, or juvenile would result in imminent danger to anyone.

(b) Federal program monitoring. Upon request of the department, the department of children and families, 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 that department or federal agency.

(c) Law enforcement agencies. Upon request of a law enforcement agency to review court records for the purpose of investigating a crime that might constitute criminal gang activity, as defined in s. 941.38 (1) (b), the court shall open for inspection by authorized representatives of the law enforcement agency the records of the court relating to any juvenile who has been found to have
committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if committed by an adult.

(d) Bail; impeachment; firearm possession. Upon request of a court of criminal jurisdiction or a district attorney to review court records for the purpose of setting bail under ch. 969, impeaching a witness under s. 906.09, or investigating and determining whether a person has possessed a firearm in violation of s. 941.29 (2) or body armor in violation of s. 941.291 (2) or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dm) Delinquency or criminal defense. Upon request of a defense counsel to review court records for the purpose of preparing his or her client’s defense to an allegation of delinquent or criminal activity, the court shall open for inspection by authorized representatives of the requester the records of the court relating to the proceeding under s. 972.15 to review court records for the purpose of preparing the presence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dr) Presentence investigation. Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by any authorized representative of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

(dm) Sex offender registration. Upon request of the department to review court records for the purpose of obtaining information concerning a juvenile who is required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department the records of the court relating to any juvenile who has been adjudicated delinquent or found in need of protection or services or not responsible by reason of mental disease or defect for an offense specified in s. 301.45 (1g) (a). The department may disclose information that it obtains under this paragraph as provided under s. 301.46.

(fm) Victim–witness coordinator. Upon request of the victim–witness coordinator to review court records for the purpose of enforcing rights under the constitution, this chapter, and s. 950.04 and providing services under s. 950.06 (1m), the court shall open for inspection by the victim–witness coordinator the records of the court relating to the enforcement of those rights or the provision of those services, including the name and address of the juvenile and the juvenile’s parents. The victim–witness coordinator may use any information obtained under this paragraph only for the purpose of enforcing those rights and providing those services and may make that information available only as necessary to ensure that victims and witnesses of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the constitution, this chapter and ch. 950. The victim–witness coordinator may also use that information to disclose the name and address of the juvenile and the juvenile’s parents to the victim of the juvenile’s act.

(fm) Victim’s insurer. Upon request of an insurer of the victim, as defined in s. 938.02 (2m) (a) 1., the court shall disclose to an authorized representative of the requester the amount of restitution, if any, that the court has ordered a juvenile to make to the victim.

(g) Paternity of juvenile. 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 subch. 1X of ch. 767, the party’s attorney or the guardian ad litem for the juvenile 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. 48 relating to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the requester its records relating to the paternity of the juvenile or disclose to the requester those records.

(gm) Other courts. Upon request of any court assigned to exercise jurisdiction under this chapter and ch. 48, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney, corporation counsel, or city, village, or town attorney to review court records for the purpose of any proceeding in that court or upon request of the attorney or guardian ad litem for a party to a proceeding in that court to review court records for the purpose of that proceeding, the court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by any authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(h) Custody of juvenile. 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 juvenile, the court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) shall open for inspection by an authorized representative of the requester its records relating to any juvenile who has been the subject of a proceeding under this chapter.

(i) Probate court. Upon request of the court assigned to exercise probate jurisdiction, the attorney general, the personal representative or special administrator of, or an attorney performing services for, the estate of a decedent in any proceeding under chs. 851 to 879, a person interested, as defined in s. 851.21, or an attorney, attorney–in–fact, guardian ad litem or guardian of the estate of a person interested to review court records for the purpose of s. 854.14 (5) (b), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by any authorized representative of the requester the records of the court relaling to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally killing a person.

(j) Fire investigator. Upon request of a fire investigator under s. 165.55 (15) to review court records for the purpose of pursuing an investigation under s. 165.55, the court shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been adjudicated delinquent or found to be in need of protection or services or not responsible by reason of mental disease or defect for an offense specified in s. 940.08, 940.24, 941.10, 941.11, 943.01, 943.02, 943.03, 943.04, 943.05, or 943.06 or for an attempt to commit any of those violations.

(k) Serious juvenile offenders. Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile’s family, relating to a juvenile who has been alleged to be delinquent for committing a violation specified in s. 938.34 (4b) (a). The requester may further disclose the information to anyone.

(l) Repeat offenders. Upon request of any person, the court shall open for inspection by the requester the records of the court, other than reports under s. 938.295 or 938.33 or other records that deal with sensitive personal information of the juvenile and the juvenile’s family, relating to a juvenile who has been alleged to be delinquent for committing a violation that would be a felony if committed by an adult if the juvenile has been adjudicated delinquent at any time preceding the present proceeding and that previous adjudication remains of record and unversed. The requester may further disclose the information to anyone.

(m) Notification of juvenile’s school. 1. If a petition under s. 938.12 or 938.13 (12) is filed alleging that a juvenile has committed a delinquent act that would be a felony if committed by an
adult, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the petition has been filed and the nature of the delinquent act alleged in the petition. If later the proceeding on the petition is closed, dismissed, or otherwise terminated without a finding that the juvenile has committed a delinquent act, the court clerk shall notify the school board of the school district or the governing body of the private school or tribal school in which the juvenile is enrolled or the designee of the school board or governing body that the proceeding has been terminated without a finding that the juvenile has committed a delinquent act.

2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of the violation.

3. If school attendance is a condition of a dispositional order under s. 938.34 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional order is entered, the clerk of the court assigned to exercise jurisdiction under this chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under s. 938.17 (2) shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile’s school attendance is a condition of a dispositional order.

4. If a juvenile is found to have committed a delinquent act at the request of or for the benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 if committed by an adult and is adjudged delinquent on that basis, within 5 days after the date on which the dispositional order is entered, the court clerk shall notify the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body of the fact that the juvenile has been adjudicated delinquent on that basis, the nature of the violation committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a result of that violation.

5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is adjudicated delinquent and as a result of the dispositional order is enrolled in a different school district, private school, or tribal school from the school district, private school, or tribal school in which the juvenile is enrolled at the time of the dispositional order, the court clerk, within 5 days after the date on which the dispositional order is entered, shall provide the school board of the juvenile’s new school district, the governing body of the juvenile’s new private school, or the governing body of the tribal school or the designee of the school board or governing body with the information specified in subd. 2. or 4., whichever is applicable, and, in addition, shall notify that school board, governing body, or designee of whether the juvenile has been adjudicated delinquent previously by that court, the nature of any previous violations committed by the juvenile, and the dispositions imposed on the juvenile under s. 938.34 as a result of those previous violations.

6. Except as required under subds. 1. to 5. or by order of the court, no information from the juvenile’s court records may be disclosed to the school board of the school district, the governing body of the private school, or the governing body of the tribal school in which the juvenile is enrolled or the designee of the school board or governing body. Any information from a juvenile’s court records provided to the school board of the school district or the governing body of the private school in which the juvenile is enrolled or the designee of the school board or governing body shall be disclosed by the school board, governing body, or designee to employees of the school district or private school who work directly with the juvenile or who have been determined by the school board, governing body, or designee to have legitimate educational interests, including safety interests, in the information. A school district or private school employee to whom that information is disclosed may not further disclose the information. If information is disclosed to the governing body of a tribal school under this subdivision, the court shall request that the governing body of the tribal school or its designee disclose the information to employees who work directly with the juvenile or who have been determined by the governing body or its designee to have legitimate educational interests, including safety interests, in the information, and shall further request that the governing body prohibit any employee to whom information is disclosed under this subdivision from further disclosing the information. A school board may not use any information from a juvenile’s court records as the sole basis for expelling or suspending a juvenile or as the sole basis for taking any other disciplinary action against a juvenile, but may use information from a juvenile’s court records as the sole basis for taking action against a juvenile under the school district’s athletic code. A member of a school board or of the governing body of a private school or tribal school or an employee of a school district, private school, or tribal school may not be held personally liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the member or employee acted with actual malice in failing to disclose the information. A school district, private school, or tribal school may not be held liable for any damages caused by the nondisclosure of any information specified in this subdivision unless the school district, private school, or tribal school or its agent acted with gross negligence or with reckless, wanton, or intentional misconduct in failing to disclose the information.

(n) Firearms restriction record search or background check. If a juvenile is adjudged delinquent for an act that would be a felony if committed by an adult, the court clerk shall notify the department of justice of that fact. No other information from the juvenile’s court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a firearms restrictions record search under s. 175.35 (2g) (c) or a background check under s. 175.60 (9g) (a).

(o) Criminal history record search. If a juvenile is adjudged delinquent for committing a serious crime, as defined in s. 48.685 (1) (c), the court clerk shall notify the department of justice of that fact. No other information from the juvenile’s court records may be disclosed to the department of justice except by order of the court. The department of justice may disclose any information provided under this subsection only as part of a criminal history record search under s. 48.685 (2) (am) 1. or (b) 1. a.

(3) MOTOR VEHICLE VIOLATION RECORDS. This section does not apply to proceedings for violations of chs. 340 to 349 and 351 or any county or municipal ordinance enacted under ch. 349, except that this section does apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and 346.67 (1) when death or injury occurs.

(4) OPERATING PRIVILEGE RECORDS. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile’s operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to any person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, the juvenile whose operating privilege is revoked, sus-
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OPERATING PRIVILEGE RECORDS. When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a juvenile’s operating privilege under this chapter, the department of transportation may not disclose information concerning or relating to the revocation, suspension, or restriction to anyone other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county corporation counsel, or city, village, or town attorney, a law enforcement agency, a driver licensing agency of another jurisdiction, the juvenile whose operating privilege is revoked, suspended, or restricted, or the juvenile’s parent or guardian. Persons entitled to receive this information may not disclose the information to other persons or agencies.

(10) SEXUALLY VIOLENT PERSON COMMITMENT. A law enforcement agency’s records and records of the court assigned to exercise jurisdiction under this chapter and ch. 48 shall be open for inspection by authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the records involve or relate to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information made available or disclosed under this subsection. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this subsection for any purpose consistent with any proceeding under ch. 980.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77 s. 350, 440, 448; 1997 a. 27 s. 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9 s. 32, 89; 2001 a. 95 s. 202; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 266; 2007 a. 30 s. 826 to 827, 9126 (11) (a); 2007 a. 97 s. 209 a. 304, 308, 311 s. 35, 13 s. 92 (2), (1) s. 165 s. 308.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.291 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) or 48.396 (2); or 3) an inspection request of agency records under s. 48.78 (2) (a) and s. 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramirez M.C. 2014 WI App 56, 399 Wis. 2d 709, 765 N.W.2d 545, 03–0018.

Applicable law allows electronic transmission of certain confidential case information among clerks of circuit court, county sheriff’s offices, and the Department of Justice through electronic interfaces involving the Department of Administration’s Office of Justice Assistance, specifically including electronic data messages about arrest warrants issued in juvenile cases that are confidential under sub. (2). OAG 2–10.

SUBCHAPTER IX

JURISDICTION OVER PERSONS 17 OR OLDER

938.44 Jurisdiction over persons 17 or older. The court has jurisdiction over persons 17 years of age or older as provided under ss. 938.355 (4) and 938.45 and as otherwise specified in this chapter.

History: 1995 a. 77 s. 350, 440, 448; 1997 a. 27 s. 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9 s. 32, 89; 2001 a. 95 s. 202; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 266; 2007 a. 30 s. 826 to 827, 9126 (11) (a); 2007 a. 97 s. 209 a. 304, 308, 311 s. 35, 13 s. 92 (2), (1) s. 165 s. 308.

938.45 Orders applicable to adults. (1) ORDERS WHEN ADULT CONTRIBUTED TO CONDITION OF JUVENILE. (a) If in the hearing of a case of a juvenile alleged to be delinquent under s. 938.12 or in need of protection or services under s. 938.13 it appears that any person 17 years of age or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the juvenile, the court may make orders with respect to the conduct of that person in his or her relationship to the juvenile, including orders relating to determining the ability of the person to provide for the maintenance or care of the juvenile and directing when, how, and where funds for the maintenance or care shall be paid.

(b) An act or failure to act contributes to a condition of a juvenile as described in s. 938.12 or 938.13, even if the juvenile is not found to come within the provisions of s. 938.12 or 938.13, if the natural and probable consequences of that act or failure to act would be to cause the juvenile to come within the provisions of s. 938.12 or 938.13.

(1m) ORDERS IMPOSING CONDITIONS ON JUVENILE’S PARENT, GUARDIAN, OR LEGAL CUSTODIAN. (a) In a proceeding in which a juvenile has been adjudicated delinquent or has been found to be in need of protection or services under s. 938.13, the court may order the juvenile’s parent, guardian, or legal custodian to comply with any conditions determined by the court to be necessary for the juvenile’s welfare. An order may include participation in mental health treatment, anger management, individual or family counseling or parent training and education, and a requirement for a reasonable contribution, based on ability to pay, toward the cost of those services.

(b) A court may not order inpatient treatment under par. (a) for a juvenile’s parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51.

(1r) ORDER FOR PARENT TO PAY RESTITUTION OR FORFEITURE. (a) In a proceeding in which a juvenile has found to have committed a delinquent act or a civil law or ordinance violation that has resulted in damage to the property of another, or in actual physical injury to another excluding pain and suffering, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to make reasonable restitution for the damage or injury. Except for recovery for retail theft under s. 943.51, the maximum amount of any restitution ordered for damage or injury resulting from any one act of a juvenile or from the same act committed by 2 or more juveniles in the custody of the same parent may not exceed $5,000. The order shall include a finding that the parent is financially able to pay the amount ordered and may allow up to the date of expiration of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as restitution for the same act under s. 938.34 (5) or 938.343 (4).

(b) In a proceeding in which the court has determined under s. 938.34 (8) or 938.343 (2) that the imposition of a forfeiture would be in the best interest of the juvenile and in aid of rehabilitation, the court may order a parent who has custody, as defined in s. 895.035 (1), of the juvenile to pay the forfeiture. The amount of any forfeiture ordered may not exceed $5,000. The order shall include a finding that the parent is financially able to pay the amount ordered and shall allow up to 12 months after the date of the order for the payment. Any recovery under this paragraph shall be reduced by the amount recovered as a forfeiture for the same act under s. 938.34 (8) or 938.343 (2).

(2) RIGHT TO HEARING ON ORDERS. No order under sub. (1) (a), (1m) (a), or (1r) (a) or (b) may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the order. The court shall cause notice of the time, place, and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the court. At the hearing the person may be represented by counsel and may produce and cross—examine witnesses. A person who fails to comply with an order issued by a court under sub. (1) (a), (1m) (a), or (1r) (a) or (b) may be proceeded against for contempt of court. If the person’s conduct involves a crime, the person may be proceeded against under the criminal law.

(3) PROSECUTION OF ADULT CONTRIBUTING TO DELINQUENCY OF JUVENILE. If it appears at a court hearing that any person 17 years of age or older has violated s. 948.40, the court shall refer the record to the district attorney. This subsection does not prohibit prosecution of violations of s. 948.40 without the prior reference by the court to the district attorney.

History: 1995 a. 77 s. 350, 440, 448; 1997 a. 27 s. 35, 80, 95, 181, 205, 252, 258, 281; 1999 a. 9 s. 32, 89; 2001 a. 95 s. 202; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 266; 2007 a. 30 s. 826 to 827, 9126 (11) (a); 2007 a. 97 s. 209 a. 304, 308, 311 s. 35, 13 s. 92 (2), (1) s. 165 s. 308.

The plain meaning of “person” in sub. (1) refers to natural persons. Consequently, a school district is not capable of contributing to the delinquency of a juvenile unless the court so finds. Accordingly, the circuit court erred as a matter of law when it relied on this provision to obtain authority over a school district. Madison Metropolitan School District v. State, 73 Wis. 2d 967, 244 N.W.2d 609.

Updated 09–10 Wis. Stats. Database.  Pages 417 and 418
938.46 New evidence. A juvenile whose status is adjudicated by the court under this chapter, or the juvenile’s parent, guardian or legal custodian, may at any time within one year after the entering of the court’s order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court’s original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. This section does not apply to motions made under s. 974.07 (2).

938.47 Motion for postdisposition relief and appeal. (1) APPEAL BY RESPONDENT. A motion for postdisposition relief from a final order or judgment entered by a person subject to this chapter shall be made in the time and manner provided in ss. 809.30 to 809.32. An appeal from a final order or judgment entered under this chapter or from an order denying a motion for postdisposition relief by a person subject to this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficient to show that the evidence or issues previously raised. (2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

938.48 Authority of department. The department may do all of the following: (1) ENFORCEMENT OF LAWS. Promote the enforcement of the laws relating to delinquent juveniles and juveniles in need of protection or services and take the initiative in all matters involving the interests of those juveniles when adequate provision for those matters is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies, parents, and other individuals interested in the welfare of juveniles. (2) JUVENILE WELFARE SERVICES. Assist in extending and strengthening juvenile welfare services with appropriate federal agencies and in conformity with the federal Social Security Act and in cooperation with parents, other individuals, and other agencies so that all juveniles needing such services are reached. (3) SUPERVISION AND SPECIAL TREATMENT OR CARE. Accept supervision over juveniles transferred to it by the court under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), and provide special treatment or care to juveniles when directed by the court. Except as provided in s. 938.505 (2), a court may not direct the department to administer psychotropic medications to juveniles who receive special treatment or care under this subsection. (4) CARE, TRAINING, AND PLACEMENT. Provide appropriate care and training for juveniles under its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4), including serving those juveniles in their own homes, placing them in licensed foster homes or licensed group homes under s. 48.63, contracting for their care by licensed child welfare agencies, or replacing them in juvenile correctional facilities or secured residential facilities for children and youth under the supervision of the department, when the court shall immediately notify the department of that action. The court shall, in accordance with procedures established by the department, provide appropriate care and training for juveniles under its supervision when the court orders that such care and training is necessary for the health or safety of the juvenile. (5) MENTAL HEALTH SERVICES. Provide necessary mental health services to juveniles under the department's supervision when the court orders that such services are necessary for the health or safety of the juvenile.
vide transportation for the juvenile to a receiving center designated by the department or deliver the juvenile to department personnel.

(2) Transfer of Court Report and Pupil Records. When a court places a juvenile in a juvenile correctional facility or a secured residential care center for children and youth under the supervision of the department, the court and all other public agencies shall immediately do all of the following:

(a) Transfer to the department a copy of the report submitted to the court under s. 938.33 or, if the report was presented orally, a transcript of the report and all other pertinent data in its possession.

(b) Notify the juvenile’s last school district or, if the juvenile was last enrolled in a private school participating in the program under s. 118.60 or in the program under s. 119.23, the private school, in writing of its obligation under s. 118.125 (4).

History: 1995 a. 77; 2005 a. 344; 2009 a. 28; 2011 a. 32.

938.50 Examination of juveniles under supervision of department. The department shall examine every juvenile who is placed under its supervision to determine the type of placement best suited to the juvenile and to the protection of the public. The examination shall include an investigation of the personal and family history of the juvenile and his or her environment, any physical or mental examinations necessary to determine the type of placement appropriate for the juvenile, and an evaluation under s. 938.533 (2) to determine whether the juvenile is eligible for corrective sanctions supervision or serious juvenile offender supervision. The department shall screen a juvenile who is examined under this section to determine whether the juvenile is in need of special treatment or care because of the abuse, mental illness, or severe emotional disturbance. In making the examination the department may use any facilities, public or private, that offer assistance in determining the correct placement for the juvenile.

History: 1995 a. 77; 2005 a. 344.

938.505 Juveniles placed under correctional supervision. (1) Rights and Duties of Department or County Department. When a juvenile is placed under the supervision of the department under s. 938.185, 938.34 (4h), (4m) or (4n) or 938.357 (4) or (5) (e) or under the supervision of a county department under s. 938.34 (4n), the department or county department having supervision over the juvenile shall have the right and duty to protect, train, discipline, treat and confine the juvenile and to provide food, shelter, legal services, education and ordinary medical and dental care for the juvenile, subject to the rights, duties, and responsibilities of the guardian of the juvenile and subject to any residual parental rights and responsibilities and the provisions of any court order.

(2) Psychotropic Medication. (a) If a juvenile 14 years of age or older is under the supervision of the department or a county department as described in sub. (1), is not residing in his or her home, and wishes to be administered psychotropic medication but a parent with legal custody or the guardian refuses to consent to the administration of psychotropic medication or cannot be found, or if there is no parent with legal custody, the department or county department acting on the juvenile’s behalf may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 in the county in which the juvenile is located for permission to administer psychotropic medication to the juvenile. 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 hearing, the court determines that all of the following apply, the court shall grant permission for the department or county department to administer psychotropic medication to the juvenile without the parent’s or guardian’s consent:

1. The parent’s or guardian’s consent is unreasonably withheld, the parent or guardian cannot be found, or there is no parent with legal custody, except that the court may not determine that a parent’s or guardian’s consent is unreasonably withheld solely because the parent or guardian relies on treatment by spiritual means through prayer for healing in accordance with his or her religious tradition.

2. The juvenile is 14 years of age or older, is competent to consent to the administration of psychotropic medication, and voluntarily consents to the administration of psychotropic medication.

3. The juvenile, based on the recommendation of a physician, is in need of psychotropic medication, and psychotropic medication is appropriate for the juvenile’s needs and is the least restrictive treatment consistent with those needs.

(b) The court may, at the request of the department or county department, temporarily approve the administration of psychotropic medication, for not more than 10 days after the date of the request, pending the hearing on the petition. The hearing shall be held within that 10−day period.

History: 1995 a. 77; 2005 a. 344.

Cross-reference: See also chs. DOC 375 and 383, Wis. adm. code.

938.51 Notification of release or escape of juvenile from correctional custody or supervision. (1) Release from Secured Facility or Supervision. At least 15 days prior to the date of release from a juvenile correctional facility or a secured residential care center for children and youth of a juvenile who has been adjudicated delinquent and at least 15 days prior to the release from the supervision of the department or a county department of a juvenile who has been adjudicated delinquent, the department or county department having supervision over the juvenile shall make a reasonable attempt to do all of the following:

(a) Notify all of the following local agencies in the community in which the juvenile will reside of the juvenile’s return to the community:

1. The law enforcement agencies.

2. The school district.

3. The county departments under ss. 46.215, 46.22, 46.23, 51.42 and 51.437.

(b) Subject to pars. (c) and (cm), notify any known victim of the act for which the juvenile has been found delinquent of the juvenile’s release, if all of the following apply:

2. The victim can be found.

3. The victim has sent in a request card under sub. (2) or, if the victim was under 18 years of age when his or her parent sent in a request card under sub. (2), the parent or guardian authorized on the request card direct notification of the victim after the victim attains 18 years of age.

(c) Subject to par. (cm), notify an adult relative of the victim of the juvenile’s release if all of the following apply:

1. The victim died as a result of the juvenile’s delinquent act.

2. The adult relative can be found.

3. The adult relative has sent in a request card under sub. (2).

(cm) Notify the victim’s parent or legal guardian of the juvenile’s release if all of the following apply:

1. The victim is younger than 18 years of age.

2. The parent or legal guardian can be found.

3. The parent or legal guardian has sent in a request card under sub. (2).

(d) Notify any witness who testified against the juvenile in any court proceeding involving the delinquent act of the juvenile’s release if all of the following apply:

1. The witness can be found.

2. The witness has sent in a request card under sub. (2).

(1d) Release from Nonscured Residential Care Center. At least 15 days prior to the release from a nonscured residential care center for children and youth of a juvenile who has either been adjudicated delinquent under s. 48.12, 1993 stats., or s. 938.12 or been found to be in need of protection or services under s. 48.13 (12), 1993 stats., or s. 938.13 (12) and who has been found to have committed a violation of ch. 940 or of s. 948.02, 948.025, 948.03, or 948.085 (2), and at least 15 days prior to the release...
from a nonsecured residential care center for children and youth of a juvenile who has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the department or county department having supervision over the juvenile shall notify all of the following persons of the juvenile’s release:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim’s parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1g) RELEASE FROM INPATIENT FACILITY. At least 15 days prior to the release from an inpatient facility, as defined in s. 51.01 (10), of a juvenile who has been found to be in need of protection or services under s. 48.13 (14), 1993 stats., or s. 938.13 (14), the county department having supervision over the juvenile shall notify all of the following persons of the juvenile’s release:

(a) Any known victim of the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim’s parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found to be in need of protection or services, if the criteria under sub. (1) (d) are met.

(1m) NOTIFICATION OF LOCAL AGENCIES. The department or county department having supervision over a juvenile described in sub. (1) shall determine the local agencies that it will notify under sub. (1) (a) based on the residence of the juvenile’s parents or on the juvenile’s intended residence specified in the juvenile’s aftercare supervision plan or, if those methods do not indicate the community in which the juvenile will reside following release from a juvenile correctional facility or a secured residential care center for children and youth or from the supervision of the department or county department, the community in which the juvenile states or intends to reside.

(1t) CONTENTS OF NOTICE. The notification under sub. (1), (1d) or (1g) shall include only the juvenile’s name, the date of the juvenile’s release and the type of placement to which the juvenile is released.

(2) NOTIFICATION REQUEST CARDS. The department shall design and prepare cards for any person specified in sub. (1) (b), (c), (cm), or (d) to send to the department or county department having supervision over a juvenile described in sub. (1), (1d), or (1g). The cards shall have space for the person’s name, telephone number and mailing address, the name of the applicable juvenile, and any other information that the department determines is necessary. The cards shall advise a victim who is under 18 years of age that he or she may complete a card requesting notification under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age and advising the parent or guardian of a victim who is under 18 years of age that the parent or guardian may authorize on the card direct notification of the victim under sub. (1) (b), (1d), or (1g) if the notification occurs after the victim attains 18 years of age. The department shall provide the cards, without charge, to district attorneys. District attorneys shall provide the cards, without charge, to persons specified in sub. (1) (b) to (d). These persons may send completed cards to the department or county department having supervision over the juvenile. Department and county department records or portions of records that relate to telephone numbers and mailing addresses of these persons are not subject to inspection or copying under s. 19.35 (1).

(3) RELEASE NOT AFFECTED BY FAILURE TO NOTIFY. Timely release of a juvenile specified in sub. (1), (1d) or (1g) shall not be prejudiced by the fact that the department or county department having supervision over the juvenile did not provide notification as required under sub. (1), (1d) or (1g), whichever is applicable.

(4) NOTIFICATION IF ESCAPE OR ABSENCE. If a juvenile described in sub. (1), (1d), or (1g) escapes from a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, home, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified period of time and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, as soon as possible after the department or county department having supervision over the juvenile discovers the escape or absence, the department or county department shall make a reasonable attempt to notify by telephone all of the following persons:

(a) Any known victim of the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (b) are met; an adult relative of the victim, if the criteria under sub. (1) (c) are met; or the victim’s parent or guardian, if the criteria under sub. (1) (cm) are met.

(b) Any witness who testified against the juvenile in any court proceeding involving the act for which the juvenile was found delinquent or to be in need of protection or services, if the criteria under sub. (1) (d) are met.

History:

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

(a) Receiving homes to be used for the temporary care of juveniles.

(b) Foster homes.

(c) Group homes.

(d) Institutions, facilities, and services, including forestry or conservation camps, for the training and treatment of juveniles 10 years of age or older who have been adjudged delinquent.

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

(2) USE OF OTHER FACILITIES. (a) In addition to facilities and services under sub. (1), the department may use other facilities and services under its jurisdiction. The department may contract for and pay for the use of other public facilities or private facilities for the care and treatment of juveniles in its care. Placement of juveniles in private or public facilities not under the department’s jurisdiction does not terminate its supervision under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4). Placements in institutions for persons with a mental illness or development disability shall be made in accordance with ss. 48.14 (5), 48.63, and 938.34 (6) (am) and ch. 51.

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

(c) The department may inspect any facility it is using and examine and consult with persons under its supervision under s.
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938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) who have been placed in the facility.

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

History: 1995 a. 77; 2005 a. 344; 2009 a. 28.

938.53 Duration of control of department over delinquents. Except as provided under ss. 48.366 and 938.183, a juvenile adjudged delinquent who has been placed under the supervision of the department under s. 938.183, 938.34 (4h), (4m), or (4n), or 938.357 (4) shall be discharged as soon as the department determines that there is a reasonable probability the departmental supervision is no longer necessary for the rehabilitation and treatment of the juvenile or for the protection of the public.


938.533 Corrective sanctions. (2) CORRECTIVE SANCTIONS PROGRAM. From the appropriation under s. 20.410 (3) (hr), the department shall provide a corrective sanctions program to serve an average daily population of 136 juveniles unless the appropriation under s. 20.410 (3) (hr) is supplemented under s. 20.410 (3) (hr) for the initial phase of placement in the community under the program shall be provided by the department’s office of juvenile offender review shall evaluate and select for participation in the program juveniles who have been placed under the supervision of the department under s. 938.183, 938.34 (4h) or (4m), or 938.357 (4). The department shall place a program participant in the community, provide intensive surveillance of that participant, and provide an average of not more than $3,000 per year per slot to purchase community-based treatment services for each participant. The department shall make the intensive surveillance available 24 hours a day, 7 days a week, and may purchase or provide electronic monitoring for the intensive surveillance of program participants. The department shall provide a report center in Milwaukee County to provide on−site programming after school and in the evening for juveniles from Milwaukee County who are placed in the corrective sanctions program.

A contact worker providing services under the program shall have a case load of approximately 10 juveniles and, during the initial phase of placement in the community under the program of a juvenile who is assigned to that contact worker, shall have not less than one face−to−face contact per day with that juvenile. Case management services under the program shall be provided by a corrective sanctions agent who shall have a case load of approximately 15 juveniles. The department shall promulgate rules to implement the program.

(3) INSTITUTIONAL STATUS. (a) A participant in the corrective sanctions program is under the supervision of the department, is subject to the rules and discipline of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 938.19 to 938.21, if a juvenile violates a condition of his or her participation in the corrective sanctions program the department may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under s. 938.355 (6) or a change in the conditions of the juvenile’s participation in the program are being investigated. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

(b) The department shall operate the corrective sanctions program as a Type 2 juvenile correctional facility. The secretary may allocate and reallocate existing and future facilities as part of the Type 2 juvenile correctional facility. The Type 2 juvenile correctional facility is subject to s. 301.02. Construction or establishment of a Type 2 juvenile correctional facility shall be in compliance with all state laws except Chs. 32.035 and ch. 91. In addition to the exemptions under s. 13.48 (13), construction or establishment of a Type 2 juvenile correctional facility is not subject to the ordinances or regulations relating to zoning, including zoning under ch. 91, of the county and city, village, or town in which the construction or establishment takes place and is exempt from the investigations permitted under s. 46.22 (1) (c) 1. b.

(3m) ESCAPE. If a juvenile runs away from his or her placement in the community while participating in the corrective sanctions program, the juvenile is considered to have escaped in violation of s. 946.42 (3) (c).


938.534 Intensive supervision program. (1) PROGRAM REQUIREMENTS; VIOLATION OF CONDITION OF PARTICIPATION. (a) A county department may provide an intensive supervision program for juveniles who have been adjudicated delinquent and ordered to participate in an intensive supervision program under s. 938.34 (2r). A county department that provides a program may purchase or provide intensive surveillance and community−based treatment services for participants in the program and may purchase or provide electronic monitoring for the intensive surveillance of program participants. A county providing services under a program may have a case load of no more than 10 juveniles and shall have not less than one face−to−face contact per day with each juvenile who is assigned to that caseworker, except that the face−to−face contact requirement does not apply to a juvenile placed under par. (b) or (c).

(b) 1. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile violates a condition of his or her participation in the program, the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours while the alleged violation and the appropriateness of a sanction under s. 938.355 (6) or a change in the conditions of the juvenile’s participation in the program are being investigated. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

2. Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this subdivision, if a juvenile violates a condition of the juvenile’s participation in the program, the juvenile’s caseworker or any other person authorized to provide or providing intake or dispositional services for the court under s. 938.067 or 938.069 may, without a hearing, take the juvenile into custody and place the juvenile in a juvenile detention facility or juvenile portion of a county jail that meets the standards promulgated by the department by rule or in a place of nonsecure custody designated by that person for not more than 72 hours as a consequence of that violation. Short−term detention under this subdivision may be imposed only if at the dispositional hearing the court explained those conditions to the juvenile and informed the juvenile of that possible placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement. A person who takes a juvenile into custody under this subdivision shall permit the...
juvenile to make a written or oral statement concerning the possible placement of the juvenile and the course of conduct for which the juvenile was taken into custody. A person designated by the court or the county department who is employed in a supervisory position by a person authorized to provide or providing intake or dispositional services under s. 938.06(7) or 938.069 shall review that statement and either approve the placement, modify the terms of the placement, or order the juvenile to be released from custody.

3. A juvenile may be taken into and held in custody under both subds. 1. and 2. in connection with the same course of conduct, except that no juvenile may be held in custody for more than a total of 72 hours under subds. 1. and 2. in connection with the same course of conduct unless the juvenile receives a hearing under par. (d).

(d) 3m. Subject to par. (d), subds. 1. and 2. do not preclude a juvenile who has violated a condition of the juvenile’s participation in the program from being taken into and held in custody under s. 938.19 to 938.21.

4. The use of placement in a juvenile detention facility or in a juvenile portion of a county jail as a place of short-term detention under sub. 1. or 2. 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 places of short-term detention under subd. 1. or 2.

(c) Notwithstanding ss. 938.19 to 938.21, but subject to any general written policies adopted by the court under s. 938.06 (1) or (2) and to any policies adopted by the county board relating to the taking into custody and placement of a juvenile under this paragraph, if the juvenile is in need of crisis intervention the juvenile’s caseworker may, without a hearing, take the juvenile into custody and place the juvenile in a place of nonsecure custody for not more than 30 days. This placement may be made only if at the dispositional hearing the court informed the juvenile of the possibility of placement or if before the violation the juvenile has acknowledged in writing that he or she has read, or has had read to him or her, those conditions and that possible placement and that he or she understands those conditions and that possible placement.

(d) If the juvenile is held under par. (b) 1. or 2. in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for longer than 72 hours, the juvenile is entitled to a hearing under s. 938.21. The hearing shall be conducted in the manner provided in s. 938.21, except that the hearing shall be conducted within 72 hours, rather than 24 hours, after the end of the day that the decision to hold the juvenile was made and a written statement of the reasons for continuing to hold the juvenile in custody may be filed rather than a petition under s. 938.25.

(2) RULES FOR INTENSIVE SUPERVISION PROGRAM. The department shall promulgate rules specifying the requirements for an intensive supervision program under this section. The rules shall include provisions governing the use of placement in a juvenile detention facility, juvenile portion of a county jail, or place of nonsecure custody for not more than 72 hours under sub. (1) (b) and the use of placement in a place of nonsecure custody for not more than 30 days under sub. (1) (c).

938.555 Early release and intensive supervision program; limits. The department may establish a program for the early release and intensive supervision of juveniles who have been placed in a juvenile correctional facility or a secured residential care center for children and youth under s. 938.183 or 938.34 (4m). The program may not include juveniles who have been placed in a juvenile correctional facility or a secured residential care center for children and youth as a result of a delinquent act involving the commission of a violent crime as defined in s. 969.035, but not including the crime specified in s. 948.02 (1).

938.538 Serious juvenile offender program. (2) PROGRAM ADMINISTRATION AND DESIGN. The department shall administer a serious juvenile offender program for juveniles who have been adjudicated delinquent and ordered to participate in the program under s. 938.34 (4h). The department shall design the program to provide all of the following:

(a) Supervision, care and rehabilitation that is more restrictive than ordinary supervision in the community.

(b) Component phases that are intensive and highly structured.

(c) A series of component phases for each participant that is based on public safety considerations and the participant’s need for supervision, care and rehabilitation.

(3) COMPONENT PHASES. (a) The department shall provide each participant with one or more of the following sanctions:

1. Subject to subd. 1m., placement in a Type I juvenile correctional facility or a secured residential care center for children and youth for a period of not more than 3 years.

1m. If the participant has been adjudicated delinquent for committing an act that would be a Class A felony if committed by an adult, placement in a Type I juvenile correctional facility or a secured residential care center for children and youth until the participant reaches 25 years of age, unless the participant is released sooner, subject to a mandatory minimum period of confinement of not less than one year.

1p. Alternate care, including placement in a foster home, group home, residential care center for children and youth, or secured residential care center for children and youth.

2. Intensive or other field supervision, including corrective sanctions supervision under s. 938.533 or aftercare supervision.

3. Electronic monitoring.

4. Alcohol or other drug abuse outpatient treatment and services.

5. Mental health treatment and services.

6. Community service.

7. Restitution.

8. Transitional services for education and employment.

9. Other programs as prescribed by the department.

(b) The department may provide the sanctions under par. (a) in any order, may provide more than one sanction at a time and may return to a sanction that was used previously for a participant. Notwithstanding ss. 938.357, 938.363 and 938.533 (3), a participant is not entitled to a hearing regarding the department’s exercise of authority under this subsection unless the department provides for a hearing by rule.

(4) INSTITUTIONAL STATUS. (a) A participant in the program under this section is under the supervision and control of the department, is subject to the rules and discipline of the department, and is considered to be in custody, as defined in s. 946.42 (1) (a). Notwithstanding ss. 938.19 to 938.21, if a participant violates a condition of his or her participation in the program under sub. (3) (a) 2. to 9. while placed in a Type 2 juvenile correctional facility the department may, without a hearing, take the participant into custody and return him or her to placement in a Type 1 juvenile correctional facility or a secured residential care center for children and youth. Any intentional failure of a participant to remain within the extended limits of his or her placement while participating in the serious juvenile offender program or to return within the time prescribed by the administrator of the division of intensive sanctions in the department is considered an escape under s. 946.42 (3) (c). This paragraph does not preclude a juvenile who has violated a condition of the juvenile’s participation in the program under sub. (3) (a) 2. to 9. from being taken into and held in custody under ss. 938.19 to 938.21.

(b) The department shall operate the component phases of the program specified in sub. (3) (a) 2. to 9. as a Type 2 juvenile correctional facility. The secretary of corrections may allocate and reallocate existing and future facilities as part of the Type 2 juvenile correctional facility. The Type 2 juvenile correctional...
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938.538 all state laws except s. 32.035 and ch. 91. In addition to the exemptions required under s. 301.36.

In addition to the exemptions required under s. 301.36.

section or establishment takes place and is exempt from inspections required under s. 301.36.

(5) TRANSFERS AND DISCHARGE. (a) The office of juvenile offender review in the division of juvenile corrections in the department may release a participant to aftercare supervision under s. 301.03 (10) (d) at any time after the participant has completed 2 years of participation in the serious juvenile offender program. Aftercare supervision of the participant shall be provided by the department.

(b) The department may discharge a participant from participation in the serious juvenile offender program and from department supervision and control at any time after he or she has completed 2 years of participation in the serious juvenile offender program.

(c) Sections 938.357 and 938.363 do not apply to changes of placement and revisions of orders for a juvenile who is a participant in the program.

(6) PURCHASE OF SERVICES. The department may contract with the department of health services, the department of children and family services, or any public or private agency for the purchase of goods, care, and services for participants in the program established under this section. The department shall purchase goods, care, or services under this subsection from the appropriation under s. 20.410 (3) (cg).

(7) RULES. The department shall promulgate rules to implement this section.

History:


Cross-reference: See also ch. DOC 394 and 396, Wis. adm. code.

938.54 Records. The department shall keep a complete record on each juvenile under its supervision under s. 938.183, 938.34 (4b), (4m) or (4n) or 938.357 (4). This record shall include the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and examinations given the juvenile, and a complete history of all placements of the juvenile while under the supervision of the department.

History: 1995 a. 77.

938.547 Juvenile alcohol and other drug abuse pilot program. (1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by juveniles is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat juveniles for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by juveniles, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of drugs by juveniles by establishing a juvenile alcohol and other drug abuse pilot program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for juveniles with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 48 in the pilot counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.437 (1) (mb) that is available for the pilot program, the department of children and families shall select counties that meet the requirements of s. 20.437 (1) (mb).
to participate in the pilot program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a pilot program, the application submitted to the department of children and families shall be a joint application by the county department that provides social services and the county department established under s. 51.42 or 51.437. The department of children and families shall select counties in accordance with the request—for—proposal procedures established by that department. The department of children and families shall give a preference to county applications that include a plan for case management.

(3) MULTIDISCIPLINARY SCREEN. The multidisciplinary screen developed for the pilot program shall be used by an intake worker to determine whether or not a juvenile is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen juveniles for:

(a) Family dysfunction.
(b) School or truancy problems.
(c) Mental health problems.
(d) Delinquent behavior patterns.

(4) ASSESSMENT CRITERIA. The uniform alcohol and other drug abuse assessment criteria that the department developed shall be used in the pilot program under ss. 938.245 (2) (a) 3., 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344 (2g). An approved treatment facility that assesses a person under ss. 938.245 (2) (a) 3., 938.295 (1), 938.32 (1g), 938.343 (10) and 938.344 (2g) may also provide substance abuse treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.

History: 1995 a. 27 a. 9126 (19); 1995 a. 77, 448; 2007 a. 20.

938.548 Multidisciplinary screen and assessment criteria. The department of children and families shall make the multidisciplinary screen developed under s. 938.547 (3) and the assessment criteria developed under s. 938.547 (4) available to all counties.

History: 1995 a. 27 a. 9126 (19); 1995 a. 77; 2007 a. 20.

938.549 Juvenile classification system. (1) CLASSIFICATION SYSTEM CONTENT. The department shall make available to all counties a juvenile classification system that includes at least all of the following:

(a) A risk assessment instrument for determining the probability that a juvenile who has committed an offense will commit another offense.
(b) A needs assessment instrument for determining the service needs of a juvenile who has committed an offense.
(c) A services and placement guide for integrating the risk and needs of a juvenile who has committed an offense with other factors to determine an appropriate placement and level of services for the juvenile.

(2) USES OF CLASSIFICATION SYSTEM. A county may use the juvenile classification system to do any of the following:

(a) At the time of an intake inquiry, determine whether to close a case, enter into a deferred prosecution agreement or refer the case to the district attorney.
(b) At the time of disposition, recommend a placement and a plan of rehabilitation, treatment and care for the juvenile.
(c) After disposition, determine the level or intensity of supervisory contacts required for a juvenile under county supervision.

(3) TRAINING IN USE OF SYSTEM. Subject to the availability of resources, the department may provide training and technical assistance in the use of the juvenile classification system to any county that requests that training and technical assistance.

History: 1995 a. 77; 2005 a. 344.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4−20−12 are printed as if currently in effect. Changes effective after 4−20−12 are designated by NOTES. See Are the Statutes on this Website Official?
is receiving juvenile welfare services under sub. (1) from the county department has changed his or her county of residence, shall provide notice of that change to the county department of the person’s new county of residence. The notice shall include a brief, written description of the services offered or provided to the person by the county department and the name, telephone number, and address of a person to contact for more information.

(3) **CONTINUING MAINTENANCE FOR JUVENILES OVER 17.** (a) From the reimbursement received under s. 48.569 (1) (d), counties may provide funding for the maintenance of any juvenile who meets all of the following qualifications:
1. Is 17 years of age or older.
2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.
3. Received funding under s. 48.569 (1) (d) immediately prior to his or her 17th birthday.
4. Is living in a foster home, group home, residential care center for children and youth, or subsidized guardianship home.

(b) The funding provided for the maintenance of a juvenile under par. (a) shall be in an amount equal to that to which the juvenile would receive under s. 48.569 (1) (d) if the juvenile were 16 years of age.

(4) **AFTERCARE SUPERVISION.** A county department may provide aftercare supervision under s. 938.34 (4n) for juveniles who are released from juvenile correctional facilities or secured residential care centers for children and youth. If a county department intends to change its policy regarding whether the county department or the department shall provide aftercare supervision for juveniles released from juvenile correctional facilities or secured residential care centers for children and youth the county executive or county administrator, or, if the county has no county executive or county administrator, the chairperson of the county board of supervisors, or, for multicounty departments, the chairpersons of the county boards of supervisors jointly, shall submit a letter to the department stating that intent before July 1 of the year preceding the year in which the policy change will take effect.

**History: 1995 a. 77; 1997 a. 27, 35; 1999 a. 9, 97; 2001 a. 38, 59; 2005 a. 25, 293, 344; 2007 a. 20, 97; 2009 a. 28; 2011 a. 32.**

**938.59 Examination and records.** (1) **INVESTIGATION AND EXAMINATION.** The county department shall investigate the personal and family history and environment of any juvenile transferred to its legal custody or placed under its supervision under s. 938.34 (4d) or (4n) and make any physical or mental examinations of the juvenile considered necessary to determine the type of care necessary for the juvenile. The county department shall screen a juvenile who is examined to determine whether the juvenile is in need of special treatment or care because of alcohol or other drug abuse, mental illness, or severe emotional disturbance. The county department shall keep a complete record of the information received from the court, the date of reception, all available data on the personal and family history of the juvenile, the results of all tests and examinations given the juvenile, and a complete history of all placements of the juvenile while in the legal custody or under the supervision of the county department.

(2) **REPORT TO THE DEPARTMENT.** At the department’s request, the county department shall report to the department regarding juveniles in the legal custody or under the supervision of the county department.

**History: 1995 a. 77, 352; 2005 a. 344.**

**938.595 Duration of control of county departments over delinquents.** Except as provided in s. 48.366, a juvenile who has been adjudged delinquent and placed under the supervision of a county department under s. 938.34 (4d) or (4n) shall be discharged as soon as the county department determines that there is a reasonable probability that it is no longer necessary either for the rehabilitation and treatment of the juvenile or for the protection of the public that the county department retain supervision.

**History: 1995 a. 77, 352.**
to the agency the pupil records of the individual as necessary for the agency to provide that treatment or care. The agency may use the pupil records only for the purpose of providing treatment or care and may make the pupil records available only to employees of the agency who are providing treatment or care for the individual.

(d) Paragraph (a) does not prohibit the department of health services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., or s. 938.34 (4d) or (4n) to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.
3. Subject to an order under s. 48.366 or 938.183 and placed in a state prison under s. 48.366 (8) or 938.183.
4. On probation to the department of corrections under s. 973.09.
5. On parole under s. 302.11 or ch. 304 or on extended supervision under s. 302.113 or 302.114.

(e) Notwithstanding par. (a), an agency shall, upon request, disclose information to authorized representatives of the department of corrections, the department of health services, the department of justice, or a district attorney for use in the prosecution of any proceeding or any evaluation conducted under ch. 980, if the information involves or relates to an individual who is the subject of the proceeding or evaluation. The court in which the proceeding under ch. 980 is pending may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph. Any representative of the department of corrections, the department of health services, the department of justice, or a district attorney may disclose information obtained under this paragraph for any purpose consistent with any proceeding under ch. 980.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of safety and professional services or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, closed 457. Unless authorized by an order of the court, the department of safety and professional services and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit the department of children and families, a county department, or a licensed child welfare agency from entering the content of any record kept or information received by that department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 48.47 (7g) or the department of children and families from transferring any information maintained in that system to the court under s. 48.396 (3) (b). If the department of children and families transfers that information to the court, the court and the director of state courts may allow access to that information as provided in s. 48.396 (3) (c) 2.

(i) Paragraph (a) does not prohibit an agency from disclosing information to a relative of a juvenile placed outside of his or her home only to the extent necessary to facilitate the establishment of a relationship between the juvenile and the relative or a placement of the juvenile with the relative or from disclosing information under s. 938.21 (5) (e), 938.355 (2) (cm), or 938.357 (2v) (d). In this paragraph, “relative” includes a relative whose relationship is derived through a parent of the juvenile whose parental rights are terminated.

(3) RELEASE OF INFORMATION WHEN ESCAPE OR ABSENCE. RULES. If a juvenile adjudged delinquent under s. 48.12, 1993 stats., or s. 938.12 or found to be in need of protection or services under ss. 48.13 (12), 1993 stats., or s. 48.13 (14), 1993 stats., or s. 938.13 (12) or (14) on the basis of a violation of s. 49.34 (1m) or (1r), 1999 stats., or s. 941.10, 941.11, 941.20, 941.21, 941.23, 941.235, 941.237, 941.24, 941.26, 941.28, 941.295, 941.298, 941.30, 941.31, 941.32, 941.325, 943.02, 943.03, 943.04, 943.10 (2) (a), 943.23 (1g), 943.32 (2), 948.02, 948.025, 948.03, 948.05, 948.055, 948.085 (2), 948.60, 948.605, or 948.61 or any crime specified in ch. 940 has escaped from a juvenile correctional facility, residential care center for children and youth, inpatient facility, as defined in s. 51.01 (10), juvenile detention facility, or juvenile portion of a county jail, or from the custody of a peace officer or a guard of such a facility, center, or jail, or has been allowed to leave a juvenile correctional facility, residential care center for children and youth, inpatient facility, juvenile detention facility, or juvenile portion of a county jail for a specified time period and is absent from the facility, center, home, or jail for more than 12 hours after the expiration of the specified period, the department or county department having supervision over the juvenile may release the juvenile’s name and any information about the juvenile that is necessary for the protection of the public or to secure the juvenile’s return to the facility, center, home, or jail. The department shall promulgate rules establishing guidelines for the release of the juvenile’s name or information about the juvenile to the public.


NOTE: The above annotation cites to s. 48.78, the predecessor statute to s. 938.78.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) and 938.396 (2); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Courtney F. v. Ramirez M.C. 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03–018.

SUBCHAPTER XVIII
COMMUNITY SERVICES
938.795 Powers of the department. The department may do all of the following:

(1) COLLECT STATISTICS AND INFORMATION. Collect and collaborate with other agencies in collecting statistics and information useful in determining the cause and amount of delinquency and crime in this state or in carrying out the powers and duties of the department relating to delinquency and crime. 

(2) ASSIST COMMUNITIES. Assist communities in their efforts to combat delinquency and social breakdown likely to cause delinquency and crime and assist them in setting up programs for coordinating a total community program relating to delinquency and crime, including the improvement of law enforcement.

(3) ASSIST SCHOOLS. Assist schools in extending their particular contribution in identifying and helping juveniles vulnerable to delinquency and crime and in improving school services for all youth.

(4) ENLIGHTEN PUBLIC OPINION. Develop and maintain an enlightened public opinion in support of any program to control delinquency and crime.


*2009–10 Wis. Stats. database current through 2011 Wis. Act 219, except 2011 Wis. Acts 146 and 181. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
938.795 JUVENILE JUSTICE CODE

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

938.988 Interstate placement of juveniles. Sections 48.988 and 48.989 apply to the interstate placement of juveniles, except that s. 48.99, rather than those sections, applies to the interstate placement of juveniles following withdrawal from the Interstate Compact on the Placement of Children as described in s. 48.9895.

History: 1995 c. 77; 2009 a. 339.

938.991 Interstate compact on juveniles. The following compact, by and between the state of Wisconsin and any other state which has or shall hereafter ratify or legally join in the same, is ratified and approved:

INTERSTATE COMPACT ON JUVENILES.

The contracting states solemnly agree:

(1) ARTICLE I—FINDINGS AND PURPOSES. That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation, extended supervision or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of nondelinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

(2) ARTICLE II—EXISTING RIGHTS AND REMEDIES. That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

(3) ARTICLE III—DEFINITIONS. That, for the purposes of this compact:

(a) “Court” means any court having jurisdiction over delinquent, neglected or dependent children.

(b) “Delinquent juvenile” means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court.

(c) “Probation, extended supervision or parole” means any kind of conditional release of juveniles authorized under the laws of the states party hereto.

(d) “Residence” or any variant thereof means a place at which a home or regular place of abode is maintained.

(e) “State” means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) ARTICLE IV—RETURN OF RUNAWAYS. (a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of that parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the return of the juvenile. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile’s custody, the circumstances of the juvenile’s running away, the juvenile’s location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his or her welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by the valid certified copies of the document or documents on which the petitioner’s entitlement to the juvenile’s custody is based, such as birth certificates, letters of guardianship, or custody decrees. Further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel the return of the juvenile to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to legal custody of the juvenile, and that the return of the juvenile is in the best interest and for the protection of the juvenile. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, rectifying therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of the requisition hereunder. No juvenile detained upon a detention order shall be delivered over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile, unless the juvenile shall first be taken forthwith before a judge of a court in the state, who shall inform the juvenile of the demand made for his or her return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the juvenile over to the officer whom the court demanding the juvenile shall have appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to that juvenile’s legal custody, that juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the juvenile, subject to the order of the court, for the juvenile’s own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this compact pursuant to a requisition for the return of the juvenile from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found any
(a) That the appropriate person or authority from whose probation, extended supervision or parole supervision a delinquent juvenile has absconded or from whose institutional custody the delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of that person’s adjudication as a delinquent juvenile, the circumstances of the breach of the terms of the delinquent juvenile’s probation, extended supervision or parole or of the delinquent juvenile’s escape from an institution or agency vested with legal custody or supervision of the delinquent juvenile, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation, extended supervision or parole or to the legal custody of the institution or agency concerned. Further affidavits and other documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records and files. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon a detention order shall be delivered over to the officer whom the appropriate person or authority demanding the delinquent juvenile shall have appointed to receive the delinquent juvenile, unless the delinquent juvenile shall first be taken forthwith before a judge of an appropriate court in the state, who shall immediately upon the demand made for the return of the delinquent juvenile and who may appoint counsel or guardian ad litem for the delinquent juvenile. If the judge shall find that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding shall have appointed to receive the delinquent juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(am) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation, extended supervision or parole, or escaped from an institution or agency vested with legal custody or supervision of the person in any state party to this compact, the person may be taken into custody in any other state party to this compact without a requisition. In that event, the person must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a time, not exceeding 90 days, as will enable the person’s detention under a detention order issued on a requisition pursuant to this subsection. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation, extended supervision or parole or escaped from an institution or agency vested with legal custody or supervision of the delinquent juvenile, there is pending in the state wherein the delinquent juvenile is detained any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for an act committed in that state, or if the delinquent juvenile is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of that state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of the officers’ authority and the identity of the delinquent being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this compact, without interference. Upon the return of the delinquent juvenile to the state from which the juvenile ran away, the delinquent juvenile shall be subject to further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this subsection shall be responsible for payment of the transportation costs of such return.

(c) That “juvenile” as used in this subsection means any person who is a minor under the laws of the state of residence of the parent, guardian, or person in legal custody or supervision of the delinquent juvenile, with legal custody or supervision of the person in any state party to this compact, upon the establishment of the officers’ authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this compact, without interference. Upon the return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.
mit any delinquent juvenile within such state, placed on probation, extended supervision or parole, to reside in any other state party to this compact (herein called “receiving state”) while on probation, extended supervision or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertaking to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the receiving state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer, parolee or person under extended supervision under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer, parolee or person under extended supervision in cases where the parent, guardian or person entitled to legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation, extended supervision or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation, extended supervision or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation, extended supervision or parole, there is pending against the delinquent juvenile within the receiving state any criminal charge or any proceeding to have the delinquent juvenile adjudicated a delinquent juvenile for any act committed in that state, or if the delinquent juvenile is suspected of having committed within that state a criminal offense or an act of juvenile delinquency, the delinquent juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this subsection for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

**ARTICLE VIII — RESPONSIBILITY FOR COSTS.**

(a) That subs. (4) (b), (5) (b) and (7) (d) shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to sub. (4) (b), (5) (b) or (7) (d).

**ARTICLE IX — DETENTION PRACTICES.** That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

**ARTICLE X — SUPPLEMENTARY AGREEMENTS.** That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(a) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

(b) Provide that the delinquent juvenile shall be given a court hearing prior to being sent to another state for care, treatment and custody;

(c) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(d) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(e) Provide for reasonable inspection of such institutions by the sending state;

(f) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to the delinquent juvenile’s being sent to another state; and

(g) Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

**ARTICLE XI — ACCEPTANCE OF FEDERAL AND OTHER AID.**

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

**ARTICLE XII — COMPACT ADMINISTRATORS.**

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

**ARTICLE XIII — EXECUTION OF COMPACT.**

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

**ARTICLE XIV — RENUNCIATION.** That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months notice in writing of its intention to withdraw from the compact to the other states party thereto. The duties and obligations of a renouncing state under sub. (7) shall continue as to parolees, probationers and persons on extended supervision residing therein at the time of withdrawal until retaken or finally discharged. Supplemental agreements entered into under sub. (10) shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months’ renunciation notice of the present Article.

**ARTICLE XV — SEVERABILITY.** That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance...
938.992 Definitions. As used in the interstate compact on juveniles, the following words and phrases have the following meanings as to this state:

1. (a) The “appropriate court” of this state to issue a requisition under s. 938.991 (4) is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the petitioner’s residence, or, if the petitioner is a child welfare agency, the court assigned for the county where the agency has its principal office, or, if the petitioner is the department, any court so assigned in the state.

2. (b) The “appropriate court” of this state to receive a requisition under s. 938.991 (4) or (5) or 938.998 is the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county where the juvenile is located.

3. “Executive authority” means the compact administrator.

4. Notwithstanding s. 938.991 (3) (b), “delinquent juvenile” does not include a person subject to an order under s. 48.366 who is confined to a state prison under s. 302.01.


938.993 Juvenile compact administrator. (1) Under the interstate compact on juveniles, the governor may designate an officer or employee of the department to be the compact administrator, who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. The compact administrator shall serve subject to the pleasure of the governor. If there is a vacancy in the office of compact administrator or in the case of absence or disability, the functions shall be performed by the secretary of corrections, or other employee designated by the secretary. The compact administrator may cooperate with all departments, agencies and officers of and in the government of this state and its political subdivisions in facilitating the proper administration of the compact or of any supplementary agreement entered into by this state.

(2) The compact administrator shall determine for this state whether to receive juvenile probationers, parolees and persons on extended supervision of other states under s. 938.991 (7) and shall arrange for the supervision of each such probationer, parolee or person on extended supervision received, either by the department or by a person appointed to perform supervision service for the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county where the juvenile is to reside, whichever is more convenient. Those persons shall in all such cases make periodic reports to the compact administrator regarding the conduct and progress of the juveniles.


938.994 Supplementary agreements. The department may enter into supplementary agreements with appropriate officials of other states under s. 938.991 (10). If the supplementary agreement requires or contemplates the use of any institution or facility of this state or the provision of any service by this state, the supplementary agreement has no effect until approved by the department or agency under whose jurisdiction the institution or facility is operated or which shall be charged with the rendering of the service.


938.995 Financial arrangements. The expense of returning juveniles to this state pursuant to s. 938.991 shall be paid as follows:

1. In the case of a runaway under s. 938.991 (4), the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds the petitioner is able to do so, shall order the petitioner to pay all the expenses of returning the juvenile; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for that person’s actual and necessary expenses; and the court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, the petitioner may be proceeded against for contempt.

2. In the case of an escapee or absconder under s. 938.991 (5) or (6), if the juvenile is in the legal custody or under the supervision of the department, it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to the juvenile’s custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for the person’s actual and necessary expenses. In this subsection “appropriate court” means the court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state under s. 938.991 (7), then the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the juvenile’s residence during the supervision.

3. In the case of a voluntary return of a runaway without requisition under s. 938.991 (6), the person entitled to the juvenile’s legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns the juvenile; but if the person is financially unable to pay all the expenses he or she may petition the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county of the petitioner’s residence for an order arranging for the transportation as provided in sub. (1). The court shall inquire summarily into the financial ability of the petitioner and, if it finds the petitioner is unable to bear any or all of the expense, the court shall arrange for the transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for the person’s actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of the expense as the court finds the petitioner is able to pay. If the petitioner fails, without good cause, or refuses to pay that sum, he or she may be proceeded against for contempt.

4. In the case of a juvenile subject to a petition under s. 938.998, the appropriate court shall arrange for the transportation at the expense of the county in which the violation of criminal law is alleged to have been committed and order that the county reimburse the person, if any, who returns the juvenile, for the person’s actual and necessary expenses. In this subsection “appropriate court” means the court assigned to exercise jurisdiction under this chapter and ch. 48 for the county in which the violation of criminal law is alleged to have been committed.


938.996 Compensation. Any judge of this state who appoints counsel or a guardian ad litem pursuant to the provisions of the interstate compact on juveniles may, in the judge’s discretion, allow reasonable compensation in an amount not to exceed the compensation paid to private attorneys under s. 777.08 (4m) (b), to be paid by the county on order of the court.


The courts’ power to appropriate compensation for court-appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Court, 192 Wis. 2d 141, 531 N.W.2d 32 (1995).
938.997 Responsibilities of state departments, agencies and officers. The courts, departments, agencies and officers of this state and its political subdivisions shall enforce the interstate compact on juveniles and shall do all things appropriate to the effectuation of its purposes which may be within their respective jurisdictions.

History: 1995 a. 77 s. 399; Stats. 1995 s. 938.997.

938.998 Rendition of juveniles alleged to be delinquent. (1) This amendment shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of s. 938.991 (5) and (6) shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in s. 938.991 (5) shall be forwarded by the judge of the court in which the petition has been filed.

History: 1985 a. 294; 1995 a. 77 s. 400; Stats. 1995 s. 938.998.

938.9985 Renunciation of Interstate Compact on Juveniles. Sections 938.991 to 938.998 do not apply to a juvenile from this state who is located in another state and who is a runaway, as described in s. 938.991 (4), an escapee or absconder, as described in s. 938.991 (5), a probationer, person on extended supervision, or parolee under the supervision of that other state, as described in s. 938.991 (7), or a juvenile charged as being a delinquent, as described in s. 938.998, or to a juvenile from another state who is located in this state and who is a runaway, as described in s. 938.991 (4), an escapee or absconder, as described in s. 938.991 (5), a probationer, person on extended supervision, or parolee under the supervision of this state, as described in s. 938.991 (7), or a juvenile charged as being a delinquent, as described in s. 938.998, if all of the following have occurred:

1. The Interstate Compact for Juveniles under s. 48.991 is in effect as provided in s. 938.999 (10) (b).
2. Both this state and the other state are parties to the Interstate Compact for Juveniles under s. 938.999.
3. Both this state and the other state have renounced the Interstate Compact on Juveniles as provided under s. 938.991 (14).

History: 2005 a. 234.

938.999 Interstate Compact for Juveniles. (1) Article I — Purpose. (a) The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that the U.S. Congress, by enacting the Crime Control Act, 4 USC 112, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

(b) It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to do all of the following:

1. Ensure that the adjudicated juveniles and status offenders who are subject to this compact are provided with adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state.
2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected.
3. Return juveniles who have run away, absconded, or escaped from supervision or control or who have been accused of an offense to the state requesting their return.
4. Make contracts for the cooperative institutionalization in public facilities in member states of delinquent youth needing special services.
5. Provide for the effective tracking and supervision of juveniles.
6. Equitably allocate the costs, benefits, and obligations of the compact among the compacting states.
7. Establish procedures to manage the movement between states of juvenile offenders who are released to the community under the jurisdiction of courts, juvenile departments, or other criminal or juvenile justice agencies that have jurisdiction over juvenile offenders.
8. Ensure that immediate notice is given to jurisdictions where defined offenders are authorized to travel to or relocate across state lines.
9. Establish procedures to resolve pending charges or detainers against juvenile offenders before transfer or release to the community under this compact.
10. Establish a system of uniform data collection of information pertaining to juveniles who are subject to this compact that allows access by authorized juvenile justice and criminal justice officials and a system of regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators.
11. Monitor compliance with the rules governing the interstate movement of juveniles and intervene to address and correct any noncompliance with those rules.
12. Coordinate training and education regarding the regulation of the interstate movement of juveniles for officials who are involved in that activity.
13. Coordinate the implementation and operation of this compact with the Interstate Compact on the Placement of Children under ss. 48.988 and 48.989, the Interstate Compact for the Placement of Children under ss. 48.99, the Interstate Compact for Adult Offender Supervision under s. 304.16, and other compacts affecting juveniles, particularly in those cases in which concurrent or overlapping supervision issues arise.

(c) It is the policy of the compacting states that the activities conducted by the interstate commission are the formation of public policies and, therefore, are public business. Furthermore, the compacting states shall cooperate with each other and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles who are subject to this compact.

(d) The compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

(2) Article II — Definitions. In this section:

(a) “Bylaws” means the bylaws established by the interstate commission for its governance or for directing or controlling its actions or conduct.

(b) “Commissioner” means the voting representative of each compacting state appointed under sub. (3) (b).

(c) “Compact administrator” means the person appointed under this compact in each compacting state who is responsible for the administration and management of the state’s supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(d) “Compacting state” means a state that has enacted the enabling legislation for this compact.

(e) “Court” means a court having jurisdiction over delinquent, neglected, or dependent juveniles.
(f) “Deputy compact administrator” means the person, if any, appointed in each compacting state to act on behalf of a compact administrator in the administration and management of the state’s supervision and transfer of juveniles who are subject to this compact, the rules, and the policies adopted by the state board under this compact.

(g) “Interstate commission” means the interstate commission for juveniles established under sub. (3) (a).

(h) “Juvenile” means a person who is defined as a juvenile under the law of any compacting state or by the rules, including all of the following:

1. An accused delinquent. For purposes of this subdivision, “accused delinquent” means a person who is charged with an offense that, if committed by an adult, would be a criminal offense.

2. An adjudicated delinquent. For purposes of this subdivision, “adjudicated delinquent” means a person who has been found to have committed an offense that, if committed by an adult, would be a criminal offense.

3. An accused status offender. For purposes of this subdivision, “accused status offender” means a person who is charged with an offense that would not be a criminal offense if committed by an adult.

4. An adjudicated status offender. For purposes of this subdivision, “adjudicated status offender” means a person who has been found to have committed an offense that would not be a criminal offense if committed by an adult.

5. A nonoffender. For purposes of this subdivision, “nonoffender” means a person who is in need of supervision, but who has not been charged with or found to have committed an offense.

(i) “Noncompacting state” means a state that has not enacted a policy or provision of the compact or an organizational, procedural, or practice requirement of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and amending the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact that are managed by an executive director and interstate commission staff; administer enforcement of and compliance with the compact, the bylaws, and the rules; and perform such other duties as directed by the interstate commission or as specified in the bylaws.

(j) Each commissioner is entitled to cast the vote to which the compacting state represented by the commissioner is entitled and to participate in the business and affairs of the interstate commission. A commissioner shall vote in person and may not delegate a vote to another compacting state, except that a commissioner, in consultation with the state board of the commissioner’s state, may appoint another authorized representative, in the absence of the commissioner, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members’ participation in meetings by telephone or by other means of telecommunication or electronic communication.

(k) The bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent that the information or records would adversely affect personal privacy rights or proprietary interests.

(l) The interstate commission shall elect a chairperson and a secretary, which shall include officers and members of the interstate commission or committee determines by a two-thirds vote of a majority of its members. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and, except as provided in par. (i), meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include officers and members of the interstate commission and others as determined by the bylaws. The executive committee may act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and amending the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact that are managed by an executive director and interstate commission staff; administer enforcement of and compliance with the compact, the bylaws, and the rules; and perform such other duties as directed by the interstate commission or as specified in the bylaws.

(3) ARTICLE III — INTERSTATE COMMISSION FOR JUVENTILES

There is created the interstate commission for juveniles. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all of the responsibilities, powers, and duties specified in this section and such additional powers as may be conferred upon the interstate commission by subsequent action of the respective legislatures of the compacting states exercised in accordance with this compact.

(b) The interstate commission shall consist of commissioners appointed by the appropriate appointing authority in each compacting state under the requirements of the compacting state and in consultation with the state board of the compacting state. The commissioner shall be the compact administrator, deputy compact administrator, or designee from the compacting state and shall serve on the interstate commission in that capacity under the applicable law of the compacting state.

(c) In addition to the commissioners who are the voting representatives of each compacting state, the interstate commission shall include, as nonvoting members, persons who are members of interested organizations. Those nonvoting members shall include members of the national organizations of governors, legislators, state supreme court chief justices, attorneys general, juvenile justice and juvenile corrections officials, and crime victims and members of the Interstate Compact on the Placement of Children, the Interstate Compact for the Placement of Children, and the Interstate Compact for Adult Offender Supervision. The interstate commission may provide in the bylaws for the inclusion of additional nonvoting members, including members of other national organizations, in such numbers as may be determined by the interstate commission.

(d) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws.

(e) The interstate commission shall meet at least once each year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and, except as provided in par. (i), meetings shall be open to the public.

(f) The interstate commission shall establish an executive committee, which shall include officers and members of the interstate commission and others as determined by the bylaws. The executive committee may act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making and amending the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact that are managed by an executive director and interstate commission staff; administer enforcement of and compliance with the compact, the bylaws, and the rules; and perform such other duties as directed by the interstate commission or as specified in the bylaws.

(g) Each commissioner is entitled to cast the vote to which the compacting state represented by the commissioner is entitled and to participate in the business and affairs of the interstate commission. A commissioner shall vote in person and may not delegate a vote to another compacting state, except that a commissioner, in consultation with the state board of the commissioner’s state, may appoint another authorized representative, in the absence of the commissioner, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members’ participation in meetings by telephone or by other means of telecommunication or electronic communication.

(h) The bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent that the information or records would adversely affect personal privacy rights or proprietary interests.

(i) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as specified in the rules or as otherwise provided in the compact. The interstate commission and any of its committees may close a meeting to the public if the interstate commission or committee determines by a two-thirds vote that an open meeting would be likely to do any of the following:

1. Relate solely to the interstate commission’s internal personnel practices and procedures.

2. Disclose matters that are specifically exempted from disclosure by statute.

3. Disclose trade secrets or commercial or financial information that is privileged or confidential.

4. Involve accusing any person of a crime or formally censoring any person.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*.

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5. Disclose information that is of a personal nature, if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy.
6. Disclose investigative records that have been compiled for law enforcement purposes.
7. Disclose information that is contained in or related to an examination, operating, or condition report prepared by, on behalf of, or for the use of the interstate commission with respect to a regulated person for the purpose of regulation or supervision of that person.
8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person.
9. Specifically relate to the interstate commission’s issuance of a subpoena or the participation of the interstate commission in a civil action or other legal proceeding.

(j) For every meeting that is closed under par. (i), the interstate commission’s legal counsel shall publicly certify that, in the opinion of the legal counsel, the meeting may be closed to the public and shall reference each provision under par. (i) authorizing closure of the meeting. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons for those actions, including a description of each of the views expressed on any item and the record of any roll call vote reflecting the vote of each commissioner on the question. All documents considered in connection with any action shall be identified in the minutes.

(k) The interstate commission shall collect standardized data concerning the interstate movement of juveniles as directed by the rules. The rules shall specify the date to be collected and the means of collection and shall specify data exchange and reporting requirements. Those methods of data collection, exchange, and reporting shall, insofar as is reasonably possible, conform to up-to-date technology and shall coordinate the interstate commission’s information functions with the appropriate repository of records.

1.  Establish the fiscal year of the interstate commission.
2.  Establish an executive committee and such other committees as may be necessary.
3.  Provide for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission.
4.  Provide reasonable procedures for calling and conducting meetings of the interstate commission and for ensuring reasonable notice of each meeting.
5.  Establish the titles and responsibilities of the officers of the interstate commission.
6.  Provide a mechanism for concluding the operations of the interstate commission and for returning any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of the debts and obligations of the interstate commission.
7.  Provide rules for the initial administration of the compact.
8.  Establish standards and procedures for compliance and technical assistance in carrying out the compact.

(b) Officers and staff. 1. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice chairperson shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission, except that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

2. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the
interstate commission may consider appropriate. The executive
director shall serve as secretary to the interstate commission, but
may not be a member of the interstate commission, and shall hire
and supervise such other staff as may be authorized by the inter-
state commission.

(c) Qualified immunity, defense, and indemnification. 1. The
executive director, employees, and representatives of the inter-
state commission shall be immune from suit and liability, either
personally or in their official capacity, for any claim for damage
to or loss of property, personal injury, or other civil liability caused
by, arising out of, or relating to any actual or alleged act, error, or
omission that occurred within the scope of interstate commission
employment, duties, or responsibilities, or that the person had a
reasonable basis for believing occurred within the scope of inter-
state commission employment, duties, or responsibilities, except
that this subdivision does not protect any person from suit or
liability for any damage, loss, injury, or liability that is caused by
the intentional or willful and wanton misconduct of that person.

2. The liability of any commissioner, or the employee or agent
of a commissioner, acting within the scope of that person’s
employment or duties for any act, error, or omission occurring
within that person’s state may not exceed the limits of liability
specified under the constitution and laws of that state for state of fi-
cial officers, employees, and agents, except that this subdivision does not
protect any person from suit or liability for any damage, loss, injury, or liability that is caused by
the intentional or willful and wanton misconduct of that person.

3. The interstate commission shall defend the executive direc-
tor, employees, and representatives of the interstate commission,
and, subject to the approval of the attorney general of the state rep-
resented by any commissioner of a compacting state, shall defend
a commissioner and a commissioner’s employees and agents, in
any civil action seeking to impose liability arising out of any
actual or alleged act, error, or omission that occurred within the
scope of interstate commission employment, duties, or responsi-
bilities, or that the person had a reasonable basis for believing
occurred within the scope of interstate commission employment,
duties, or responsibilities, if the actual or alleged act, error, or
omission did not result from the intentional or willful and
wanton misconduct of that person.

4. The interstate commission shall indemnify and hold harm-
less the commissioner of a compacting state, the commissioner’s
employees and agents, and the interstate commission’s executive
director, employees, and representatives in the amount of any
settlement or judgment obtained against those persons arising out of
any act or omission that occurred within the scope of interstate
commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing
occurred within the scope of interstate commission employment,
duties, or responsibilities, if the actual or alleged act, error, or
omission did not result from the intentional or willful and
wanton misconduct of that person.

(6) ARTICLE VI — RULE-MAKING FUNCTION OF THE INTERSTATE
COMMISSION.  (a) The interstate commission shall promulgate and
publish rules in order to effectively and efficiently achieve the
purposes of the compact.

(b) Rule making shall occur under the criteria specified in this
subsection and the bylaws and rules adopted under this subsec-
tion. Rule making shall substantially conform to the principles of
the Model State Administrative Procedure Act, 1981 Act, Uni-
form Laws Annotated, volume 15, page 1, (2000), or any other
administrative procedure act that the interstate commission con-
siders appropriate, consistent with the due process requirements
under the U.S. Constitution. All rules and amendments to the
rules shall become binding as of the date specified in the final rule
or amendment.

(c) When promulgating a rule, the interstate commission shall
do all of the following:

1. Publish the entire text of the proposed rule and state the rea-
son for the proposed rule.

2. Allow and invite persons to submit written data, facts, opin-
ions, and arguments, which shall be added to the rule-making
record and be made publicly available.

3. Provide an opportunity for an informal hearing, if peti-
tioned by 10 or more persons.

4. Promulgate a final rule and its effective date, if appropriate,
with the rule-making record, including input from state or
local officials and other interested parties.

(d) Not later than 60 days after a rule is promulgated, any inter-
ested person may file a petition in the U. S. district court for
the District of Columbia or in the federal district court for the district
in which the interstate commission’s principal office is located for
judicial review of that rule. If the court finds that the interstate
commission’s action is not supported by substantial evidence
in the rule-making record, the court shall hold the rule unlawful and
set the rule aside. For purposes of this paragraph, evidence is sub-
stantial if the evidence would be considered substantial evidence
under the Model State Administrative Procedure Act.

(e) If a majority of the legislatures of the compacting states
reject a rule by enactment of a statute or resolution in the same
manner used to adopt the compact, the rule shall have no further
effect in any compacting state.

(f) The rules governing the operation of the Interstate Compact
on Juveniles under ss. 938.991 to 938.998 shall be void 12 months
after the first meeting of the interstate commission.

(g) If the interstate commission determines that an emergency
exists, the interstate commission may promulgate an emergency
rule that shall become effective immediately upon promulgation,
except that the usual rule-making procedures provided under this
subsection shall be retroactively applied to the rule as soon as is
reasonably possible, but no later than 90 days after the effective
date of the emergency rule.

(7) ARTICLE VII — OVERSIGHT, ENFORCEMENT, AND DISPUTE
RESOLUTION BY THE INTERSTATE COMMISSION. (a) Oversight and
enforcement. 1. The interstate commission shall oversee the
administration and operations of the interstate movement of juve-
niles who are subject to this compact in the compacting states and
shall monitor those activities being administered in noncompacting
states that may significantly affect compacting states.

2. The courts and executive agencies in each compacting state
shall enforce this compact and shall take all actions that are neces-
sary to effectuate the purposes and intent of the compact. This
compact and the rules shall be received by all of the judges, public
officers, commissions, and departments of each compacting state
as evidence of the authorized statute and administrative rules. All
courts shall take judicial notice of the compact and rules. In any
judicial or administrative proceeding in a compacting state per-
taining to the subject matter of this compact that may affect the
powers, responsibilities, or actions of the interstate commission,
the interstate commission shall be entitled to receive all service of
process in the proceeding and shall have standing to intervene in
the proceeding for all purposes.

(b) Dispute resolution. 1. The compacting states shall report
to the interstate commission on all issues and activities that are
necessary for the administration of the compact and on all issues
and activities that pertain to compliance with this compact, the
bylaws, and the rules.

2. The interstate commission shall attempt, upon the request
of a compacting state, to resolve any dispute or other issue that is
subject to the compact and that may arise among compacting states
or between compacting states and noncompacting states.
The commission shall promulgate a rule providing for both medi-
ation and binding dispute resolution for disputes among the
compacting states.

*2009–10 Wis. Stats. database current through 2011 Wis. Act 219*. Includes all updates to statutes in effect on or prior to April 19, 2012. Statutory changes effective on or prior to 4–20–12 are printed as if currently in effect. Changes effective after 4–20–12 are designated by NOTES. See Are the Statutes on this Website Official?
3. The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact and the rules, using any or all of the means specified in sub. (11)(b) and (c).

(8) **FINANCE.** (a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy on and collect from each compacting state an annual assessment to cover the cost of the internal operations and activities of the interstate commission and its staff. The aggregate amount of the annual assessment shall be in an amount that is sufficient to cover the annual budget of the interstate commission as approved each year and shall be allocated among the compacting states based upon a formula to be determined by the interstate commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state. The interstate commission shall promulgate a rule binding on all compacting states that governs the assessment.

(c) The interstate commission may not incur any obligations of any kind before securing funds adequate to meet those obligations; nor may the interstate commission pledge the credit of any compacting state, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under the bylaws. All receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the interstate commission.

(9) **ARTICLE IX — THE STATE BOARD.** Each compacting state shall create a state board. Although each compacting state may determine the membership of its own state board, the membership of the state board of each compacting state shall include the compact administrator, the deputy compact administrator, or a designee, at least one representative from the legislative, judicial, and executive branches of government, and one representative of victims groups. Each compacting state retains the right to determine the qualifications of the compact administrator and deputy compact administrator. Each state board shall advise and may exercise oversight and advocacy concerning that state’s participation in the interstate commission and the compacting states until the amendment is enacted into law by that compacting state. The governor of noncompacting states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

**NOTE:** On August 26, 2008, Illinois became the 35th state to ratify. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date of the compact shall be July 1, 2005, or upon enactment into law by the 35th state, whichever is later. After that initial effective date, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that compacting state. The governors of noncompacting states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

(c) The interstate commission may propose amendments to the compact for enactment by the compacting states. An amendment does not become effective and binding upon the interstate commission and the compacting states until the amendment is enacted into law by the unanimous consent of the compacting states.

(11) **ARTICLE XI — WITHDRAWAL, DEFAULT, JUDICIAL ENFORCEMENT, AND DISSOLUTION.** (a) **Withdrawal.** 1. Once effective, the compact shall continue in effect and remain binding upon each compacting state, except that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law in that state and a compacting state’s membership in the compact may be suspended or terminated as provided in par. (b) 1, d. and 3. The effective date of a withdrawal by a compacting state is the effective date of the repeal of the statute that enacted the compact into law in that state.

2. A withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state’s intent to withdraw within 60 days after receiving the written notice of intent to withdraw.

3. A withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of the withdrawal.

4. Reinstatement in the compact following the withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(b) **Default.** 1. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or the rules, the interstate commission may impose on the compacting state any or all of the following penalties:

   a. Remedial training and technical assistance as directed by the interstate commission.

   b. Alternate dispute resolution.

   c. Forfeitures, fees, and costs in such amounts as are considered to be reasonable and as are fixed by the interstate commission.

   d. Suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the interstate commission has determined that the offending state is in default. Immediate notice of suspension shall be given by the interstate commission to the governor of the defaulting state, the chief justice of the supreme court or the chief judicial officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state.

2. The grounds for default include the failure of a compacting state to perform any obligations or responsibilities imposed upon the compacting state by this compact, the bylaws, or the rules and any other ground designated in the bylaws or rules.

3. If the interstate commission determines that a compacting state has defaulted, the interstate commission shall immediately notify the defaulting state in writing of the default and of the penalty imposed by the interstate commission pending a cure of the default. The interstate commission shall stipulate the conditions under which and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by this compact shall be terminated beginning on the effective date of termination. Within 60 days after the effective date of termination of a defaulting state, the interstate commission shall notify the governor of the defaulting state, the chief justice of the supreme court or the chief judicial officer of that state, the majority and minority leaders of the legislature of that state, and the state board of that state.

4. A defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

5. The interstate commission shall not bear any costs relating to a defaulting state unless otherwise mutually agreed upon in
writing between the interstate commission and the defaulting state.

6. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission under the rules.

(c) **Judicial enforcement.** The interstate commission may, by a majority vote of the members, initiate legal action in the U.S. district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district court for the district in which the interstate commission has its offices to enforce compliance with the compact, the bylaws, and the rules against any compacting state that is in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation, including reasonable attorney fees.

(d) **Dissolution.** The compact dissolves effective upon the date of a withdrawal or default of a compacting state that reduces membership in the compact to one compacting state. Upon dissolution of the compact, the compact becomes void and shall be of no further effect, the business and affairs of the interstate commission shall be concluded, and any surplus funds shall be distributed in accordance with the bylaws.

(12) **ARTICLE XII — CONSTRUCTION.** The provisions of this compact shall be liberally construed to effectuate the purposes of the compact.

(13) **ARTICLE XIII — BINDING EFFECT OF COMPACT AND OTHER LAWS.** (a) **Other laws.** This compact does not prevent the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws, other than state constitutions and other interstate compacts, that conflict with this compact are superseded to the extent of the conflict.

(b) **Binding effect of the compact.** 1. All lawful actions of the interstate commission, including the bylaws and rules, are binding upon the compacting states.

2. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over the meaning or interpretation of an interstate commission action and upon a majority vote of the compacting states, the interstate commission may issue an advisory opinion regarding that meaning or interpretation.

4. If a provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the interstate commission shall be ineffective, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdiction are delegated by the law that is in effect at the time that this compact becomes effective.

**History:** 2005 a. 234; 2009 a. 339.

938.9995 Expediting interstate placements of juveniles. The courts of this state shall do all of the following to expedite the interstate placement of juveniles:

1. Subject to ss. 48.396 (2) and 938.396 (2), cooperate with the courts of other states in the sharing of information.

2. To the greatest extent possible, obtain information and testimony from agencies and parties located in other states without requiring interstate travel by those agencies and parties.

3. Permit parents, juveniles, other necessary parties, attorneys, and guardians ad litem in proceedings involving the interstate placement of a juvenile to participate in those proceedings without requiring interstate travel by those persons.

**History:** 2009 a. 79.
STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS
OFFICE OF DETENTION FACILITIES

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Southern Region

Northeastern Region

Southeastern Region

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MONITORING TIMETABLE

Establishing a timetable not only enables the monitoring team to meet the minimum expectations set by OJJDP, but also to identify the facilities at which violations and concerns are likely to arise and establish practices and procedures to correct the violations and prevent future problems from arising.

In Wisconsin, the compliance monitoring team will visit and conduct inspections of:

<table>
<thead>
<tr>
<th>MONITORING PERIOD</th>
<th>Jan/Feb</th>
<th>Mar/Apr</th>
<th>May</th>
<th>July/Sep</th>
<th>Oct/Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Juvenile Detention and Correctional Facilities:</strong> Federal expectations are that facilities within this category will be inspected at a rate such that 100% are visited every three years. Wisconsin will conduct inspections at each juvenile detention facility and at the two correctional facilities annually. The Vel Phillips Juvenile Justice Center (Milwaukee County Detention Center) will be visited as quarterly reports become available with those visits ideally occurring in January, April, July, and October).</td>
<td></td>
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<td></td>
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<tr>
<td>3 minimum</td>
<td>4 minimum</td>
<td>Remaining</td>
<td>Total: 18</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Adult prisons:** Federal expectations are that random inspections shall occur to ensure no status or non-offenders are held and that there is complete separation between any juvenile delinquent offenders and adult inmates. Wisconsin will conduct a random inspection of at least one facility annually and will alternate the visited facilities.

Random facility

**Non-secure Community-based Programs and Facilities:** Federal expectations are that monitoring will occur to verify the non-secure status. Wisconsin will visit at least one facility annually.

Random facility

**Collocated facility:** Federal expectations and Wisconsin practices are that 100% of these facilities will be visited annually. The visit will ensure that total sight and sound separation is maintained; that there is no sharing of staff between the facilities during the shift; and that all the rules regarding avoiding contact between adult trustees and juvenile inmates, etc. are observed. Federal and Wisconsin rules are that 100% of these facilities will be visited annually.

3 facilities | 3 facilities | Remaining | Total: 10
**MONITORING TIMETABLE**

<table>
<thead>
<tr>
<th>MONITORING PERIOD</th>
<th>Jan/Feb</th>
<th>Mar/Apr</th>
<th>May</th>
<th>July/Sep</th>
<th>Oct/Dec</th>
</tr>
</thead>
</table>

**Secure Mental Health Facility:** Inspections should occur to ensure that juveniles alleged to be or found to be juvenile status offenders or non-offenders are not committed under state mental health laws to circumvent the intent of DSO. The federal expectations are for random inspections. The **Wisconsin** expectation is one random facility annually.

**Court holding facility:** The site visits are to ensure that juveniles held in the facility are held completely separate from adult inmates; are held for purposes totally related to court appearances; and are conveyed to and returned from the facility on the same day. The federal expectation is that 100% of these facilities will be visited every three years. Wisconsin will visit a minimum of five facilities annually.

- **Random facility:**
  - 2 facilities 2 facilities At least one
  
  **Total: 36**

**Jails and lock-ups:** Federal expectations are that the state monitor will visit 33% of the facilities holding juveniles annually and all facilities every three years. Random inspections are to occur at law enforcement facilities that do not report being lockups to verify that status. Inspections are to ensure the accuracy of the status and adherence to DSO; sight and sound separation; and jail removal requirements.

The City of Milwaukee Police Districts will be visited at least twice annually (in January and July) based on the volume of juveniles processed through the facility. More frequent visits shall be scheduled as warranted by information obtained during the visits.

- **Remaining:**
  - 14 facilities 14 facilities Remaining
  
  **Total: 39**

**VCO Exceptions:** The **Wisconsin** practice is that 100% of the VCO exceptions will be reviewed to determine that all the expectations reflected by the questions on the VCO checklist have been met. The federal expectations determined by the number of VCO exceptions utilized by the jurisdiction are less than the Wisconsin practice, but with overall recommendations being that this exception be phased out, the Wisconsin effort shall be to use information determined through the inspections to assist in determining strategies to eliminate use of the exception.