

Our Turn To Learn...About Working Together for Juveniles



Records & Confidentiality - Back to Basics

Frank Crisafi

Thursday, September 28, 2006
3:00 pm

Records and Confidentiality Back to Basics

**Frank Crisafi, Assistant Legal Counsel Madison
Metropolitan School District**

The session will review state and federal laws on exchanges of records relevant to an intake worker. Exchanges of records with law enforcement, schools, the G.A.L. and defense counsel will be discussed. Other discussion points will be interagency agreements and the impact of recent information.

Frank Crisafi is Assistant Legal Counsel for the Madison Metropolitan School District, intake trainer for the Wisconsin Juvenile Court Intake Association since 1991, and instructor for classes and seminars throughout Wisconsin on juvenile justice and children's court practice and procedure.

WJCIA / WJOA Joint Training Conference

Records and Confidentiality

Back to Basics

September 28, 2006

Wisconsin Dells

Presented By:

Atty. Frank J. Crisafi

“You know that thing we did... That’s gonna go on our permanent record – everything I worked for – puff, up in smoke.”

Cosmo Kramer
(Seinfeld, 1990)

I. The Basics

> s. 48.78 / 938.78 – Agency Records – see attached

II. What’s New

> s. 48.78 / 938.78

> Act 344

> Act 406 - DHFS computer system- eWISACWIS – s.48.78 (2) (h)
s.938.78 (2) (h) (see attached)

III. Top Ten Questions About Agency Records and Confidentiality

> Why do I have to be concerned about this?

> What records can I share with the guardian ad litem and the defense counsel?

>What records can I share with the step parent ?

> Can family law lawyers subpoena the agency records? Do I have to go to a divorce hearing?

> What records can I share with school officials? Do I have to have a current open case before I can talk with school officials?

>Does law enforcement have access to agency records when Investigating criminal law violations ?

> I thought the interagency agreements were supposed to take care of these exchanges of records problems! Why haven't they?

> What are the limitations of re-release of provider records?

> Where does HIPPA fit into all this?

> Why are the presentations on this subject so boring?

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> Why do I have to be concerned about this?

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IV. Interagency Agreement

> s. 938.396(1p)

> s. 938.78(2)(b)1m

> s. 118.125(2)(n)

V. Health and Safety Disclosure s. 118.125(2)(p) (see attached)

VI. Advice (Free to all those still here)

VII. Conclusion

938.57 JUVENILE JUSTICE CODE

2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.

3. Received funding under s. 46.495 (1) (d) immediately prior to his or her 17th birthday.

4. Is living in a foster home, treatment foster home, group home, residential care center for children and youth, or subsidized guardianship home under s. 48.62 (5).

(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. 46.495 (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; 2001 a. 38, 59; 2005 a. 25, 293, 344; s. 13.93 (2) (c).

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.

SUBCHAPTER XVII

GENERAL PROVISIONS ON RECORDS

938.78 Confidentiality of records. (1) DEFINITION. In this section, unless otherwise qualified, "agency" means the department, a county department or a licensed child welfare agency.

(2) **CONFIDENTIALITY, EXCEPTIONS.** (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 sub. (3) or s. 938.371, 938.38 (5) (b) or (d) or (5m) (d), 938.51, or 938.57 (2m) or by order of the court.

NOTE: Par. (a) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

(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 juvenile who is the subject of the record or upon the request of the juvenile, if 14 years of age or older, to the parent, guardian, legal custodian, or juvenile, unless the agency finds that inspection of the record by the juvenile, parent, guardian, or legal custodian would result in imminent danger to anyone.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the juvenile who is the subject of the record or upon the written permission of the juvenile, if 14 years of age or older, to the person named in the permission if the parent, guardian, legal custodian, or juvenile specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(b) 1. Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district 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. 48.78. 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.

1m. An agency may enter into an interagency agreement with a school board, a private school, a law enforcement agency, or another social welfare agency providing for the routine disclosure of information under subd. 1. to the school board, private school, law enforcement agency, or other social welfare agency.

2. On petition of an agency to review pupil records, as defined in s. 118.125 (1) (d), other than pupil records that may be disclosed without court order under s. 118.125 (2) or (2m), for the purpose of providing treatment or care for an individual in the care or legal custody of the agency, the court may order the school board of the school district, or the governing body of the private school, in which an individual is enrolled to disclose 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 and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., 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) Paragraph (a) does not prohibit the department from disclosing information about an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent offense, as defined in s. 980.01 (6), to the department of justice, or a district attorney or a judge acting under ch. 980 or to an attorney who represents a person subject to a petition under ch. 980. The court in which the petition under s. 980.02 is filed may issue any protective orders that it determines are appropriate concerning information disclosed under this paragraph.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) Paragraph (a) does not prohibit an agency from entering the content of any record kept or information received about an individual in its care or legal custody into the statewide automated child welfare information system established under s. 46.03 (7).

(g) Paragraph (a) also does not prohibit a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health and family services, the department of corrections, or any other organization that has entered into an information sharing and access agreement with one of those county departments or departments and that has been approved for access to the statewide automated child welfare information system by the department of health and family services from having access to information concerning a client of that county department, department, or organization under this chapter or ch. 48 or 51 that is maintained in the statewide automated child welfare information system, if necessary to enable the county department, department, or organization to perform its duties under this chapter or ch. 48 or 51 or to coordinate the delivery of services under this chapter or ch. 48 or 51 to the client. Before entering any information about an individual into the statewide automated child welfare information system, the agency entering the information shall notify the individual that the information entered may be disclosed as provided in this paragraph.

(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 s. 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. 943.23 (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: Sub. (3) is shown as affected by 2 acts of the 2005 Wisconsin legislature and as merged by the revisor under s. 13.93 (2) (c).

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283; 1999 a. 9; 2001 a. 38, 59, 109; 2003 a. 292, 321; 2005 a. 25, 277, 293, 344; s. 13.93 (2) (c).

As a juvenile has a constitutional right to both inspect and reply to a hearing examiner's report on the revocation of aftercare supervision, s. 48.78 does not prevent a juvenile from having access to the report. *State ex rel. R.R. v. Schmidt*, 63 Wis. 2d 82, 216 N.W.2d 18 (1974).

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) (a) and 938.396 (2) (a); 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, 03-3018.

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.

History: 1995 a. 77; 2005 a. 344.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

938.988 Interstate placement of juveniles. Sections 48.988 and 48.989 apply to the interstate placement of juveniles.

History: 1995 a. 77.

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

1. A statement that the public licensing agency issuing the license is responsible for providing services to the child who is placed in the foster home, as specified in the agreement.

2. A statement that the public licensing agency issuing the license is responsible for the costs of the placement and any related costs, as specified in the agreement.

3. A description of the procedures to be followed in providing emergency services to the child who is placed in the foster home and to the foster parent, as specified in the agreement.

(d) If the public licensing agency issuing a license under par. (a) 1., 2. or 3. violates the agreement under par. (c), the public licensing agency of the county in which the foster home is located may terminate the agreement and, subject to ss. 48.357 and 48.64, require the public licensing agency that issued the license to remove the child from the foster home within 30 days after receipt, by the public licensing agency that issued the license, of notification of the termination of the agreement.

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

(1r) At the time of initial licensure and license renewal, the child welfare agency or public licensing agency issuing a license under sub. (1d) or (1g) shall provide the licensee with written information relating to the age-related monthly foster care rates and supplemental payments specified in s. 48.62 (4), including payment amounts, eligibility requirements for supplemental payments and the procedures for applying for supplemental payments.

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

History: 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 336; 1993 a. 395, 446; 1995 a. 225; 1997 a. 27, 237; 1999 a. 9, 103; 2005 a. 232.

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 day care center.

(2) (a) No agency may make available for inspection or disclose the contents of any record kept or information received about an individual in its care or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d) or (5m) (d), 48.432, 48.433, 48.48 (17) (bm), 48.57 (2m), 48.93, 48.981 (7), 938.51, or 938.78 or by order of the court.

(ag) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the request of the child, if 14 years of age or over, to the parent, guardian, legal cus-

todian, or child, unless the agency determines that inspection of the record by the child, parent, guardian, or legal custodian would result in imminent danger to anyone.

(aj) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the request of a parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, upon the request of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, or upon the request of an unborn child by the unborn child's guardian ad litem to the parent, guardian, legal custodian, expectant mother, or 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.

(am) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of the child who is the subject of the record or upon the written permission of the child, if 14 years of age or over, to the person named in the permission if the parent, guardian, legal custodian, or child specifically identifies the record in the written permission, unless the agency determines that inspection of the record by the person named in the permission would result in imminent danger to anyone.

(ap) Paragraph (a) does not prohibit an agency from making available for inspection or disclosing the contents of a record, upon the written permission of the parent, guardian, or legal custodian of a child expectant mother of an unborn child who is the subject of the record, or of an expectant mother of an unborn child who is the subject of the record, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, to the person named in the permission if the parent, guardian, legal custodian, or expectant mother, and unborn child by the 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.

(c) Paragraph (a) does not prohibit the department or a county department from using in the media a picture or description of a child in the guardianship of the department or a county department for the purpose of finding adoptive parents for that child.

(d) Paragraph (a) does not prohibit the department of health and family services or a county department from disclosing information about an individual formerly in the legal custody or under the supervision of that department under s. 48.34 (4m), 1993 stats., or formerly under the supervision of that department or county department under s. 48.34 (4n), 1993 stats., to the department of corrections, if the individual is at the time of disclosure any of the following:

1. The subject of a presentence investigation under s. 972.15.
2. Under sentence to the Wisconsin state prisons under s. 973.15.

48.78 CHILDREN'S CODE

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.

(g) Paragraph (a) does not prohibit an agency from disclosing information about an individual in its care or legal custody on the written request of the department of regulation and licensing or of any interested examining board or affiliated credentialing board in that department for use in any investigation or proceeding relating to any alleged misconduct by any person who is credentialed or who is seeking credentialing under ch. 448, 455 or 457. Unless authorized by an order of the court, the department of regulation and licensing and any examining board or affiliated credentialing board in that department shall keep confidential any information obtained under this paragraph and may not disclose the name of or any other identifying information about the individual who is the subject of the information disclosed, except to the extent that redisclosure of that information is necessary for the conduct of the investigation or proceeding for which that information was obtained.

(h) 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 about an individual in its care or legal custody into the statewide automated child welfare information system established under s. 46.03 (7) (g). Paragraph (a) also does not prohibit a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health and family services, the department of corrections, or any other organization that has entered into an information sharing and access agreement with one of those county departments or departments and that has been approved for access to the statewide automated child welfare information system by the department of health and family services from having access to information concerning a client of that county department, department, or organization under this chapter or ch. 51 or 938 that is maintained in the statewide automated child welfare information system, if necessary to enable the county department, department, or organization to perform its duties under this chapter or ch. 51 or 938 or to coordinate the delivery of services under this chapter or ch. 51 or 938 to the client. Before entering any information about an individual into the statewide automated child welfare information system, the department, county department, or licensed child welfare agency entering the information shall notify the individual that the information entered may be disclosed as provided in this paragraph.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471 s. 7; 1985 a. 29 s. 3202 (23); 1985 a. 176, 292, 332; 1987 a. 332; 1989 a. 31, 107, 336; 1991 a. 17, 39; 1993 a. 16, 92, 95, 218, 227, 377, 385, 395, 479, 491; 1995 a. 27 ss. 2610 to 2614p, 9126 (19); 1995 a. 77, 230, 352; 1997 a. 205, 207, 283, 292; 2001 a. 38, 69, 104, 109; 2005 a. 25, 293, 344.

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) (a) and 938.396 (2) (a); 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. 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.

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

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

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

History: 1989 a. 31, 107; 1995 a. 27, 77.

48.80 Municipalities may sponsor activities. (1) Any municipality is hereby authorized and empowered to sponsor the establishment and operation of any committee, agency or council for the purpose of coordinating and supplementing the activities of public and private agencies devoted in whole or in part to the welfare of youth therein. Any municipality may appropriate, raise and expend funds for the purpose of establishing and of providing an executive staff to such committees, agencies or councils; may levy taxes and appropriate money for recreation and welfare projects; and may also receive and expend moneys from the state or federal government or private persons for such purposes.

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

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

SUBCHAPTER XIX

ADOPTION OF MINORS; GUARDIANSHIP

48.81 Who may be adopted. Any child who is present in this state at the time the petition for adoption is filed may be adopted if any of the following criteria are met:

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

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

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

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

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

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

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

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

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

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

48.82 Who may adopt. (1) The following persons are eligible to adopt a minor if they are residents of this state:

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

(b) An unmarried adult.

(3) When practicable and if requested by the birth parent, the adoptive parents shall be of the same religious faith as the birth parents of the person to be adopted.

SECTION 10. 48.78 (2) (h) of the statutes, as created by 2005 Wisconsin Act 25, is amended to read:

48.78 (2) (h) 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 about an individual in its care or legal custody by the department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 46.03 (7) (g). Paragraph (a) also does not prohibit a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health and family services, the department of corrections, or any other organization that has entered into an information sharing and access agreement with one of those county departments or departments and that has been approved for access to the statewide automated child welfare information system by the department of health and family services from having access to information concerning a client of that county department, department, or organization under this chapter or ch. 51 or 938 that is maintained in the statewide automated child welfare information system, if necessary to enable the county department, department, or organization to perform its duties under this chapter or ch. 51 or 938 or to coordinate the delivery of services under this chapter or ch. 51 or 938 to the client. Before entering any information about an individual into the statewide automated child welfare information system, the department, county department, or licensed child welfare agency entering the information shall notify the individual that the information entered may be disclosed as provided in this paragraph (7g).

SECTION 13. 938.78 (2) (h) of the statutes, as created by 2005 Wisconsin Act 25, is amended to read:

938.78 (2) (h) Paragraph (a) does not prohibit an agency the department of health and family services, a county department, or a licensed child welfare agency from entering the content of any record kept or information received about an individual in its care or legal custody by that department, county department, or licensed child welfare agency into the statewide automated child welfare information system established under s. 46.03 (7) (g). Paragraph (a) also does not prohibit a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health and family services, the department of corrections, or any other organization that has entered into an information sharing and access agreement with one of those county departments or departments and that has been approved for access to the statewide automated child welfare information system by the department of health and family services from having access to information concerning a client of that county department, department, or organization under this chapter or ch. 48 or 51 that is maintained in the statewide automated child welfare information system, if necessary to enable the county department, department, or organization to perform its duties under this chapter or ch. 48 or 51 or to coordinate the delivery of services under this chapter or ch. 48 or 51 to the client. Before entering any information about an individual into the statewide automated child welfare information system, the agency entering the information shall notify the individual that the information entered may be disclosed as provided in this paragraph (7g).

(h) Information from a pupil's immunization records shall be made available to the department of health and family services to carry out the purposes of s. 252.04.

(hm) Information from any pupil lead screening records shall be made available to state and local health officials to carry out the purposes of ss. 254.11 to 254.178.

(i) Upon request, the school district clerk or his or her designee shall provide the names of pupils who have withdrawn from the public school prior to graduation under s. 118.15 (1) (c) to the technical college district board in which the public school is located or, for verification of eligibility for public assistance under ch. 49, to the department of health and family services, the department of workforce development or a county department under s. 46.215, 46.22 or 46.23.

(j) 1. Except as provided under subs. 2. and 3., directory data may be disclosed to any person, if the school has notified the parent, legal guardian or guardian ad litem of the categories of information which it has designated as directory data with respect to each pupil, has informed the parent, legal guardian or guardian ad litem of that pupil that he or she has 14 days to inform the school that all or any part of the directory data may not be released without the prior consent of the parent, legal guardian or guardian ad litem and has allowed 14 days for the parent, legal guardian or guardian ad litem of that pupil to inform the school that all or any part of the directory data may not be released without the prior consent of the parent, legal guardian or guardian ad litem.

2. If a school has notified the parent, legal guardian or guardian ad litem that a pupil's name and address has been designated as directory data, has informed the parent, legal guardian or guardian ad litem of the pupil that he or she has 14 days to inform the school that the pupil's name and address may not be released without the prior consent of the parent, legal guardian or guardian ad litem, has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil to inform the school that the pupil's name and address may not be released without the prior consent of the parent, legal guardian or guardian ad litem and the parent, legal guardian or guardian ad litem has not so informed the school, the school district clerk or his or her designee, upon request, shall provide a technical college district board with the name and address of each such pupil who is expected to graduate from high school in the current school year.

3. If a school has notified the parent, legal guardian or guardian ad litem of the information that it has designated as directory data with respect to any pupil, has informed the parent, legal guardian or guardian ad litem of the pupil that he or she has 14 days to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem, has allowed 14 days for the parent, legal guardian or guardian ad litem of the pupil to inform the school that such information may not be released without the prior consent of the parent, legal guardian or guardian ad litem and the parent, legal guardian or guardian ad litem has not so informed the school, the school district clerk or his or her designee, upon request, shall provide any representative of a law enforcement agency, district attorney, city attorney or corporation counsel, county department under s. 46.215, 46.22 or 46.23 or a court of record or municipal court with such information relating to any such pupil enrolled in the school district for the purpose of enforcing that pupil's school attendance, investigating alleged criminal or delinquent activity by the pupil or responding to a health or safety emergency.

(k) A school board may disclose personally identifiable information from the pupil records of an adult pupil to the parents or guardian of the adult pupil, without the written consent of the adult pupil, if the adult pupil is a dependent of his or her parents or guardian under 26 USC 152, unless the adult pupil has informed the school, in writing, that the information may not be disclosed.

(L) A school board shall disclose the pupil records of a pupil in compliance with a court order under s. 48.236 (4) (a), 48.345 (12) (b), 938.34 (7d) (b), 938.396 (1) (d), or 938.78 (2) (b) 2. after

making a reasonable effort to notify the pupil's parent or legal guardian.

(m) A parent who has been denied periods of physical placement with a child under s. 767.24 (4) does not have the rights of a parent or guardian under pars. (a) to (j) with respect to that child's pupil records.

(n) For the purpose of providing services to a pupil before adjudication, a school board may disclose pupil records to a law enforcement agency, district attorney, city attorney, corporation counsel, agency, as defined in s. 938.78 (1), intake worker under s. 48.067 or 938.067, court of record, municipal court, private school, or another school board if disclosure is pursuant to an interagency agreement and the person to whom the records are disclosed certifies in writing that the records will not be disclosed to any other person except as permitted under this subsection.

(p) A school board may disclose pupil records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of any individual.

(2m) CONFIDENTIALITY OF PUPIL PHYSICAL HEALTH RECORDS. (a) Except as provided in par. (b), any pupil record that relates to a pupil's physical health and that is not a pupil physical health record shall be treated as a patient health care record under ss. 146.81 to 146.84.

(b) Any pupil record that concerns the results of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV shall be treated as provided under s. 252.15. In this subsection, "HIV" has the meaning given in s. 252.01 (1m).

(3) MAINTENANCE OF RECORDS. Each school board shall adopt rules in writing specifying the content of pupil records and the time during which pupil records shall be maintained. No behavioral records may be maintained for more than one year after the pupil ceases to be enrolled in the school, unless the pupil specifies in writing that his or her behavioral records may be maintained for a longer period. A pupil's progress records shall be maintained for at least 5 years after the pupil ceases to be enrolled in the school. A school board may maintain the records on microfilm, on an optical disk, or in electronic format if authorized under s. 19.21 (4) (c), or in such other form as the school board deems appropriate. A school board shall maintain law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3. separately from a pupil's other pupil records. Rules adopted under this subsection shall be published by the school board as a class 1 notice under ch. 985.

(4) TRANSFER OF RECORDS. Within 5 working days, a school district shall transfer to another school or school district all pupil records relating to a specific pupil if the transferring school district has received written notice from the pupil if he or she is an adult or his or her parent or guardian if the pupil is a minor that the pupil intends to enroll in the other school or school district or written notice from the other school or school district that the pupil has enrolled or from a court that the pupil has been placed in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g). In this subsection, "school" and "school district" include any juvenile correctional facility, secured residential care center for children and youth, adult correctional institution, mental health institute, or center for the developmentally disabled, that provides an educational program for its residents instead of or in addition to that which is provided by public and private schools.

(5) USE FOR SUSPENSION OR EXPULSION. (a) Except as provided in par. (b), nothing in this section prohibits a school district from using a pupil's records in connection with the suspension or expulsion of the pupil or the use of such records by a multidisciplinary team under ch. 115.

(b) Law enforcement officers' records obtained under s. 48.396 (1) or 938.396 (1) (b) 2. or (c) 3. and records of the court assigned to exercise jurisdiction under chs. 48 and 938 or of a municipal court obtained under s. 938.396 (2g) (m) may not be