

Confidential Services Available to Youth in Wisconsin

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Wisconsin Department of Public Instruction
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Overview

Wisconsin law provides some limited circumstances in which youth may access confidential services independently. These circumstances are summarized below. Questions regarding how these circumstances apply in the reader's specific work situation should be referred to the legal counsel of the reader's organization. Applicable statutes and other authoritative sources are cited in the narrative. Referenced statutes are included at the end of this publication, as well as instructions to help the reader directly access Wisconsin statutes electronically. Questions regarding this publication may be directed to Nic Dibble, Consultant, School Social Work Services, Student Services/Prevention and Wellness Team, at (608) 266-0963 or nic.dibble@dpi.wi.gov.

School Services

In general, students in public schools do not have privileged communications regarding any discussions or disclosures with school staff with the exception of alcohol and other drug concerns voluntarily shared by the student [Wis. Stat. 118.126]. In addition, students may also have privileged communications regarding receipt of family planning information from a school nurse. See the Family Planning Services section below.

Schools may create some measure of privileged communication in their local policy for students receiving social-emotional counseling. Wis. Stat. 118.125(1)(d) specifically excludes from the definition of "pupil records," 1) educators' personal records and 2) records necessary for, and available only to persons involved in, the psychological treatment of a pupil. The term "psychological treatment" is not defined in the law. Consequently, a school district may define in its local policy what kind of counseling (provided by the school district) constitutes psychological treatment and which school professionals are qualified to provide it. Typically, provision of social-emotional counseling in schools is limited to pupil services professionals.

Services for Runaway Youth

Based upon the federal Program Performance Standards established under the authority of Section 312 of the Runaway and Homeless Youth Act, youth are able to access services (i.e., crisis intervention, assistance accessing local services), from runaway centers without prior parental consent. However, if a youth is accepted into a temporary shelter, the parent/guardian must be contacted in not more than 72 hours, but preferably within 24 hours. Additional information can be obtained from the Wisconsin Association of Homeless and Runaway Youth (WAHRS) at (608) 241-2649 or www.wahrs.org.

Sexual Assault and Domestic Violence Services

Like adults, youth may confidentially, i.e., anonymously, access 24-hour crisis lines operated by sexual assault and domestic violence centers. Before any direct services (e.g., counseling, advocacy) are provided, written consent of a parent/guardian is generally necessary. However, practices of specific sexual assault and domestic violence centers in Wisconsin vary. Readers should contact the center(s) within their respective areas for information about their policies and practices regarding services to youth. Additional information can be obtained through the Wisconsin Coalition Against Sexual Assault (WCASA) at (608) 257-1516 or www.wcasa.org and the Wisconsin Coalition Against Domestic Violence (WCADV) at (608) 255-0539 or www.wcadv.org.

Family Planning Services

Family planning clinics are required by state law [Wis. Stat. 253.07(3)(c)] to treat all information gathered, including any personally identifiable information, as part of a confidential medical record. Information cannot be released without informed consent, with the exception of statistical information compiled without reference to anyone's identity. No distinction is made based upon age. Consequently, Wisconsin state law gives adolescents the right to access confidential family planning services. "The expectation of privacy in matters of reproductive health is so substantial that the United States Supreme Court has declared as a matter of constitutional law that reproductive privacy is a protected right, or 'liberty interest,' of individuals regardless of age or marital status. [Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976); Carey v. Population Services International, 431 U.S. 678 (1977).]"

Patient Rights and Provider Responsibilities – Privacy and Confidentiality Issues for Family Planning and Reproductive Health Services: A Resource Guide for the Wisconsin Family Planning Program. Maternal and Child Health Advisory Committee, Wisconsin Department of Health and Family Services. June, 1998.

The Wisconsin Medicaid Family Planning Waiver Program allows women who are 15 - 44 years old and whose income is at or below 185% of the federal poverty level to receive limited family planning services, e.g., oral contraceptives, natural family planning services, family planning pharmacy visits, initial and family planning office visits, tests for sexually transmitted infections. Minor women's parents' income is not included in determining financial eligibility. Application for services can be completed at any family planning or primary care clinic. There is a presumption of eligibility, so services can be provided immediately. More information can be obtained through the Wisconsin Maternal and Child Health Hotline at (800) 722-2295 or www.mch-hotlines.org.

In order to ensure sexually active minors are protected, Wisconsin state law [Wis. Stat. 48.981 (2m)] also requires health care professionals to contact county child protective services if a minor 1) had or is likely to have sexual contact or intercourse with a caregiver; 2) is unable to understand the nature or consequences of being sexually active due to mental illness, mental deficiency, age, or immaturity; 3) was physically unable to communicate unwillingness to engage in sexual intercourse or contact at the time of the act; or 4) is being exploited by another participant in the sexual contact or intercourse. Additionally, a health care professional must contact county child protective services if she or he has any reasonable doubt as to the voluntary nature of the minor's sexual involvement.

Legal Representation

Juveniles have a legal right to counsel in both criminal and juvenile proceedings [Wis. Stats. 48.23 and 938.23]. Discussions between an attorney and a client are privileged.

Alcohol and Other Drug and Mental Health Services

Juveniles 12 years of age or older may consent to some limited alcohol and other drug treatment services without the knowledge of their parents/guardians. Information about these limited services can be disclosed only with the written consent of the juvenile [Wis. Stats. 51.45(2m),

51.47]. Minors may not independently access mental health services, i.e., informed written consent of a parent/guardian is required. In addition, with some exceptions, juveniles 14 years of age and older have a right to a hearing if mental health services are being provided without the juvenile's permission [Wis. Stat. 51.61(6)]. More information is available at <http://dhs.wisconsin.gov/clientrights/minors.htm>.

HIV Test Results

The HIV test results of juveniles 14 years of age and older may not be disclosed unless the juvenile gives prior written consent, unless the juvenile has been adjudicated incompetent under Ch. 880 or is unable to communicate due to a medical condition [Wis. Stat. 252.15(5)(a)(15)].

Referenced Statutes

State statutes can be obtained electronically by going to www.legis.state.wi.us/rsb/stats.html. Type in the statute number and click on "Go."

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

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

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

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

48.981 Abused or neglected children and abused unborn children.

(2m) Exception to reporting requirement.

(a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or 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.

51.45 Prevention and control of alcoholism.

(2m) Applicability to minors.

(a) Except as otherwise stated in this section, this section shall apply equally to minors and adults.

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

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

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

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

51.47 Alcohol and other drug abuse treatment for minors without parental consent.

(1) Except as provided in subs. (2) and (3), any physician or health care facility licensed, approved, or certified by the state for the provision of health services may render preventive, diagnostic, assessment, evaluation, or treatment services for the abuse of alcohol or other drugs to a minor 12 years of age or over without obtaining the consent of or notifying the minor's parent or guardian and may render those services to a minor under 12 years of age without

obtaining the consent of or notifying the minor's parent or guardian, but only if a parent with legal custody or guardian of the minor under 12 years of age cannot be found or there is no parent with legal custody of the minor under 12 years of age. An assessment under this subsection shall conform to the criteria specified in s. 938.547 (4). Unless consent of the minor's parent or guardian is required under sub. (2), the physician or health care facility shall obtain the minor's consent prior to billing a 3rd party for services under this section. If the minor does not consent, the minor shall be solely responsible for paying for the services, which the department shall bill to the minor under s. 46.03 (18) (b).

(2) The physician or health care facility shall obtain the consent of the minor's parent or guardian:

(a) Before performing any surgical procedure on the minor, unless the procedure is essential to preserve the life or health of the minor and the consent of the minor's parent or guardian is not readily obtainable.

(b) Before administering any controlled substances to the minor, except to detoxify the minor under par. (c).

(c) Before admitting the minor to an inpatient treatment facility, unless the admission is to detoxify the minor for ingestion of alcohol or other drugs.

(d) If the period of detoxification of the minor under par. (c) extends beyond 72 hours after the minor's admission as a patient.

(3) The physician or health care facility shall notify the minor's parent or guardian of any services rendered under this section as soon as practicable.

(4) No physician or health care facility rendering services under sub. (1) is liable solely because of the lack of consent or notification of the minor's parent or guardian.

51.61 Patients rights.

(1) In this section, "patient" means any individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency, including any individual who is admitted to a treatment facility in accordance with this chapter or ch. 48 or 55 or who is detained, committed or placed under this chapter or ch. 48, 55, 971, 975 or 980, or who is transferred to a treatment facility under s. 51.35 (3) or 51.37 or who is receiving care or treatment for those conditions through the department or a county department under s. 51.42 or 51.437 or in a private treatment facility. "Patient" does not include persons committed under ch. 975 who are transferred to or residing in any state prison listed under s. 302.01. In private hospitals and in public general hospitals, "patient" includes any individual who is admitted for the primary purpose of treatment of mental illness, developmental disability, alcoholism or drug abuse but does not include an individual who receives treatment in a hospital emergency room nor an individual who receives treatment on an outpatient basis at those hospitals, unless the individual is otherwise covered under this subsection. Except as provided in sub. (2), each patient shall:

(n) Have the right to confidentiality of all treatment records, have the right to inspect and copy such records, and have the right to challenge the accuracy, completeness, timeliness or relevance of information relating to the individual in such records, as provided in s. 51.30.

(w)

2. If the patient is a minor, if the patient's parents may be liable for the cost of the patient's care and treatment and if the patient's parents can be located with reasonable effort, the treatment facility or community mental health program shall notify the patient's parents of any liability that the parents may have for the cost of the patient's care and treatment and of their

right to receive information under subd. 3., except that a minor patient's parents may not be notified under this subdivision if the minor patient is receiving care under s. 51.47 without the consent of the minor patient's parent or guardian.

(6) Subject to the rights of patients provided under this chapter, the department, county departments under s. 51.42 or 51.437, and any agency providing services under an agreement with the department or those county departments have the right to use customary and usual treatment techniques and procedures in a reasonable and appropriate manner in the treatment of patients who are receiving services under the mental health system, for the purpose of ameliorating the conditions for which the patients were admitted to the system. The written, informed consent of any patient shall first be obtained, unless the person has been found not competent to refuse medication and treatment under s. 51.61 (1) (g) or the person is a minor 14 years of age or older who is receiving services for alcoholism or drug abuse or a minor under 14 years of age who is receiving services for mental illness, developmental disability, alcoholism, or drug abuse. In the case of such a minor, the written, informed consent of the parent or guardian is required, except as provided under an order issued under s. 51.13 (1) (c) or 51.14 (3) (h) or (4) (g), or as provided in s. 51.47. If the minor is 14 years of age or older and is receiving services for mental illness or developmental disability, the written, informed consent of the minor and the minor's parent or guardian is required, except that a refusal of either such a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for admission or transfer to an approved inpatient treatment facility is reviewable under s. 51.13 (1) (c) 1., (3), or (4), or 51.35 (3) (b), and a refusal of either a minor 14 years of age or older or the minor's parent or guardian to provide written, informed consent for outpatient mental health treatment is reviewable under s. 51.14.

118.126 Privileged communications.

(1) A school psychologist, counselor, social worker and nurse, and any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, shall keep confidential information received from a pupil that the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs unless:

(a) The pupil using or experiencing problems resulting from the use of alcohol or other drugs consents in writing to disclosure of the information;

(b) The school psychologist, counselor, social worker, nurse, teacher or administrator has reason to believe that there is serious and imminent danger to the health, safety or life of any person and that disclosure of the information to another person will alleviate the serious and imminent danger. No more information than is required to alleviate the serious and imminent danger may be disclosed; or

(c) The information is required to be reported under s. 48.981.

(2) A school psychologist, counselor, social worker or nurse, or any teacher or administrator designated by the school board who engages in alcohol or drug abuse program activities, who in good faith discloses or fails to disclose information under sub. (1) is immune from civil liability for such acts or omissions. This subsection does not apply to information required to be reported under s. 48.981.

252.15 Restrictions on use of a test for HIV.

(a) An individual who is the subject of a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has

been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

15. To anyone who provides consent for the testing under sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent in this state, is under 14 years of age, or is unable to communicate due to a medical condition.

253.07 Family Planning.

(3) Individual rights, medical privilege.

(c) All information gathered by any agency, entity or person conducting programs in family planning, other than statistical information compiled without reference to the identity of any individual or other information which the individual allows to be released through his or her informed consent, shall be considered a confidential medical record.

905.04 Physician-patient, registered nurse-patient, chiropractor-patient, psychologist-patient, social worker-patient, marriage and family therapist-patient and professional counselor-patient privilege.

(2) **General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor.

(3) **Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

938.23 Right to counsel.

(1g) **Definition.** In this section, "counsel" means an attorney acting as adversary counsel.

(1j) **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 subsections.

(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.

(3) Power of the court to appoint counsel. Except as provided in this subsection, at any time, upon request or on its own motion, the court may appoint counsel for the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his or her own choosing. The court may not appoint counsel for any party other than the juvenile in a proceeding under s. 938.13.

(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 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 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.