



2009 SENATE BILL 288

September 14, 2009 – Introduced by Senators JAUCH, HOLPERIN, VINEHOUT, COGGS, TAYLOR, LASSA, KREITLOW, LEHMAN, HANSEN, ROBSON, RISSER, PLALE, ERPENBACH, S. FITZGERALD, GROTHMAN, OLSEN and HOPPER, cosponsored by Representatives HRAYCHUCK, SHERMAN, GRIGSBY, ROYS, PASCH, YOUNG, BERCEAU, SINICKI, POPE-ROBERTS, SEIDEL, TURNER, BENEDICT, HILGENBERG, SHILLING, HUBLER, CLARK, MASON, NELSON, RADCLIFFE, SOLETSKI, VRUWINK, SMITH, SHERIDAN, MURSAU, ROTH, KLEEFISCH, FRISKE, TAUCHEN, HUEBSCH, VOS, BROOKS and RIPP. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT to repeal** 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32 (1) (c) 3.,
2 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3., 48.365
3 (2m) (ad) 2., 48.685 (1) (e), 48.983 (1) (d), 48.983 (1) (e), 938.02 (18g), 938.21 (5)
4 (d) 2., 938.21 (5) (d) 3., 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d) (c) 2.,
5 938.355 (2d) (c) 3., 938.357 (2v) (c) 2., 938.357 (2v) (c) 3., 938.365 (2m) (ad) 2.
6 and 938.538 (6m) (a) 1.; **to renumber** 938.02 (9m); **to renumber and amend**
7 48.20 (8), 48.21 (5) (d) 1., 48.273 (1), 48.32 (1) (c) 1., 48.355 (2d) (c) 1., 48.357 (1)
8 (am) 2., 48.357 (2m) (c), 48.357 (2v) (c) 1., 48.365 (2m) (ad) 1., 48.424 (1), 48.981
9 (1) (cs), 938.21 (5) (d) 1., 938.273 (1) (c), 938.32 (1) (d) 1., 938.355 (2d) (c) 1.,
10 938.357 (2m) (c), 938.357 (2v) (c) 1. and 938.365 (2m) (ad) 1.; **to amend** 48.02
11 (2), 48.02 (13), 48.02 (15), 48.028 (2) (e) and (f), 48.028 (7) (b) 2. and 3., 48.13
12 (intro.), 48.14 (intro.), 48.15, 48.19 (2), 48.195 (2) (d) 7., 48.20 (2) (ag), 48.20 (2)
13 (b), 48.20 (3), 48.20 (7) (c) (intro.), 48.20 (7) (c) 1., 48.20 (7) (d), 48.21 (3) (am),
14 48.21 (3) (b), 48.21 (3) (d), 48.21 (3) (e), 48.23 (2), 48.23 (3), 48.23 (4), 48.235 (4)

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1 (a) 7., 48.235 (4m) (a) 7., 48.255 (1) (cm), 48.255 (1m) (d), 48.255 (2), 48.255 (4),
2 48.27 (3) (a) 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d), 48.30 (1), 48.30 (2),
3 48.30 (6) (a), 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315 (1m), 48.335 (3j)
4 (intro.), 48.345 (3) (intro.), 48.355 (2) (d), 48.357 (1) (am) 1., 48.357 (1) (am) 3.,
5 48.357 (1) (c) 2., 48.357 (1) (c) 3., 48.357 (2m) (a), 48.357 (2m) (b), 48.363 (1) (a),
6 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a) 3.,
7 48.365 (2m) (ag), 48.38 (4m) (b) and (c), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e),
8 48.38 (5m) (b), 48.38 (5m) (d), 48.38 (5m) (e), 48.415 (intro.), 48.42 (1) (d), 48.42
9 (2) (c), 48.42 (4) (a), 48.422 (1), 48.422 (2), 48.422 (6) (a), 48.422 (8), 48.424 (2)
10 (intro.), 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.), 48.424 (4) (a), 48.424 (4) (b),
11 48.424 (5), 48.425 (1) (intro.), 48.428 (2) (a), 48.428 (2) (b), 48.43 (5) (c), 48.43
12 (5m), 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (3m) (intro.), 48.48 (8m), 48.485,
13 48.487 (2), 48.487 (3) (b), 48.487 (4m) (b) (intro.), 48.487 (4m) (c), 48.487 (4m)
14 (d), 48.563 (3), 48.565 (intro.), 48.57 (3p) (h) 2., 48.57 (3p) (h) 3. (intro.), 48.57
15 (3p) (h) 4., 48.57 (3t), 48.63 (1), 48.63 (3) (b) 1., 48.63 (4), 48.63 (5) (b), 48.63 (5)
16 (c), 48.63 (5) (d) 3., 48.63 (5) (d) 4., 48.63 (5) (d) 5., 48.63 (5) (d) 6., 48.645 (1) (a),
17 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645 (2) (a) 4., 48.645 (2) (b), 48.685 (5) (a),
18 48.685 (5d) (a) (intro.), 48.685 (5d) (a) 2., 48.685 (5d) (a) 3., 48.685 (5d) (a) 3m.,
19 48.685 (5d) (a) 4., 48.685 (5d) (b), 48.825 (1) (b), 48.83 (1), 48.831 (2), 48.837 (1r)
20 (a), 48.837 (4) (c), 48.837 (4) (d), 48.837 (6) (c), 48.85 (1), 48.88 (2) (a) (intro.),
21 48.88 (2) (b), 48.89 (1), 48.91 (3), 48.93 (1d), 48.977 (4) (a) 1., 48.977 (4) (b) 6.,
22 48.977 (4) (c) 2., 48.978 (2) (b) 11., 48.981 (1) (ct), 48.981 (1) (i), 48.981 (3) (bm)
23 (intro.), 48.981 (3) (bm) 1., 48.981 (3) (bm) 2., 48.981 (7) (a) 10m., 48.981 (7) (a)
24 10r., 48.981 (7) (a) 11m., 938.02 (10m), 938.02 (12m), 938.02 (13), 938.02 (15),
25 938.02 (15c), 938.028 (2) (c), 938.028 (6) (a) 2. and 3., 938.13 (intro.), 938.15,

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1 938.185 (4) (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185 (4) (b), 938.19 (2),
2 938.20 (2) (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1., 938.20 (7) (d), 938.20
3 (8) (a), 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag), 938.21 (3) (am), 938.21
4 (3) (b), 938.21 (3) (d), 938.21 (3) (e), 938.23 (3), 938.23 (4), 938.235 (4) (a) 7.,
5 938.24 (2r) (title), 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r) (a) 2.,
6 938.24 (2r) (b), 938.243 (1) (e), 938.25 (2g) (title), 938.255 (1) (cm), 938.255 (1)
7 (cr) 1. a., 938.255 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255
8 (2), 938.255 (4), 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b),
9 938.299 (6) (d), 938.299 (9) (title), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30
10 (6) (a), 938.30 (7), 938.305, 938.31 (7) (a), 938.335 (3j) (intro.), 938.355 (2) (d),
11 938.355 (6) (an) 1., 938.355 (6) (b), 938.355 (6m) (am) 1., 938.355 (6m) (c),
12 938.357 (1) (am) 1., 938.357 (1) (am) 2., 938.357 (1) (am) 3., 938.357 (1) (c) 2.,
13 938.357 (1) (c) 3., 938.357 (2m) (a), 938.357 (2m) (b), 938.363 (1) (a), 938.363 (1)
14 (b), 938.365 (1m), 938.365 (2), 938.365 (2m) (a) 1., 938.365 (2m) (a) 3., 938.365
15 (2m) (ag), 938.38 (3) (intro.), 938.38 (4m) (b) and (c), 938.38 (5) (b), 938.38 (5)
16 (d), 938.38 (5) (e), 938.38 (5m) (b), 938.38 (5m) (d), 938.38 (5m) (e) and 938.538
17 (6m) (a) 4.; **to repeal and recreate** 48.01 (2), 48.028, 48.27 (3) (a) 1., 48.357 (1)
18 (am) 1., 48.357 (2m) (b), 48.363 (1) (b), 48.365 (2), 48.365 (2m) (ag), 48.38 (5) (b),
19 48.38 (5) (e), 48.38 (5m) (b), 48.38 (5m) (e), 48.428 (2) (a), 48.428 (2) (b), 48.43
20 (5m), 48.63 (1), 48.63 (4), 48.645 (1) (a), 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645
21 (2) (a) 4., 48.645 (2) (b), 938.028, 938.27 (3) (a) 1., 938.357 (1) (am) 1., 938.357
22 (1) (am) 2., 938.357 (2m) (b), 938.363 (1) (b), 938.365 (2), 938.365 (2m) (ag),
23 938.38 (5) (b), 938.38 (5) (e), 938.38 (5m) (b) and 938.38 (5m) (e); and **to create**
24 48.02 (8d), 48.02 (8m), 48.02 (8p), 48.02 (8r), 48.02 (18j), 48.14 (12), 48.207 (1g),
25 48.23 (2g), 48.255 (1) (g), 48.255 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299

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1 (9), 48.31 (5), 48.315 (1) (j), 48.32 (1) (d), 48.33 (4) (d), 48.335 (3j), 48.345 (3m),
2 48.355 (2) (b) 6v., 48.355 (2d) (d), 48.357 (1) (am) 1g., 48.357 (1) (c) 1m., 48.357
3 (1) (c) 2m., 48.357 (2m) (am), 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b)
4 4., 48.38 (4) (i), 48.38 (4m), 48.38 (5) (c) 8., 48.41 (2) (e), 48.417 (2) (cm), 48.42
5 (1) (e), 48.42 (2g) (ag), 48.424 (1) (b), 48.425 (1) (cm), 48.427 (5), 48.427 (6) (b)
6 4., 48.43 (5) (bm), 48.831 (1r), 48.831 (4) (cm), 48.833 (3), 48.837 (2) (e), 48.88
7 (2) (ag), 48.93 (1v), 48.977 (4) (c) 1. j., 48.977 (4) (c) 2m., 48.977 (4) (g) 4., 806.245
8 (1m), 938.01 (3), 938.02 (8d), 938.02 (8g), 938.02 (8m), 938.02 (8p), 938.02 (8r),
9 938.02 (18j), 938.207 (1g), 938.23 (2g), 938.255 (1) (g), 938.27 (3) (d), 938.273 (1)
10 (ag), 938.273 (1) (c) 2., 938.299 (10), 938.31 (5), 938.315 (1) (a) 11., 938.32 (1) (e),
11 938.33 (4) (d), 938.335 (3j), 938.345 (1m), 938.355 (2) (b) 6v., 938.355 (2d) (d),
12 938.355 (6) (bm), 938.355 (6) (cr), 938.355 (6m) (bm), 938.355 (6m) (cr), 938.357
13 (1) (am) 1g., 938.357 (1) (c) 1m., 938.357 (1) (c) 2m., 938.357 (2m) (am), 938.357
14 (2m) (bm), 938.357 (2v) (a) 4., 938.365 (2g) (b) 4., 938.38 (4) (i), 938.38 (4m) and
15 938.38 (5) (c) 8. of the statutes; **relating to:** Indian child welfare.

Analysis by the Legislative Reference Bureau***Introduction***

Current law. Under current law, the federal Indian Child Welfare Act (ICWA), which governs jurisdiction over child custody proceedings involving an Indian child and provides certain minimum standards for those proceedings, supercedes the provisions of the Children's Code and the Juvenile Justice Code in any child custody proceeding governed by ICWA. For purposes of ICWA, "child custody proceeding" means any of the following:

1. Any out-of-home care placement, which is any action removing an Indian child from his or her parent or Indian custodian, that is, an Indian person who has legal custody of an Indian child under tribal law or custom or state law or to whom temporary physical custody of an Indian child has been transferred by the Indian child's parent, for temporary placement in a foster home or institution, from which the parent or Indian custodian cannot have the Indian child removed on demand, but not including a placement that is based on an act that would be a crime if committed

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by an adult and not including an emergency removal of an Indian child from his or her parent or Indian custodian to prevent imminent physical harm to the child.

2. A termination of parental rights (TPR) proceeding.
3. A temporary placement of an Indian child in a foster home or institution after a TPR, but prior to or in lieu of an adoptive placement (preadoptive placement).
4. An adoptive placement.

The bill. This bill incorporates the jurisdictional provisions of ICWA and the minimum standards for Indian child custody proceedings established by ICWA into the provisions of the Children's Code relating to child in need of protection or services (CHIPS), TPR, and adoption proceedings and the provisions of the Juvenile Justice Code relating to juvenile in need of protection or services (JIPS) proceedings, other than proceedings that are based on the commission of an act that would be a crime if committed by an adult and other than an emergency removal of an Indian child from the home of his or her parent or Indian custodian to prevent imminent physical harm to the child.

Jurisdiction

Exclusive tribal jurisdiction. Under ICWA, an Indian tribe has exclusive jurisdiction over an Indian child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe and over an Indian child who is a ward of a tribal court, regardless of the residence or domicile of the Indian child, except when jurisdiction is otherwise vested in the state by federal law. This grant of jurisdiction, however, does not prevent the emergency removal of an Indian child who resides or is domiciled on a reservation, but who is temporarily located off the reservation, from his or her parent or Indian custodian in order to prevent imminent physical damage or harm to the Indian child.

Transfer of proceedings to tribes. Also, under ICWA, a state court is required to transfer a proceeding involving an out-of-home care placement of, or TPR to, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe to the jurisdiction of the Indian child's tribe upon the petition of the Indian child's parent, Indian custodian, or tribe, unless a parent of the Indian child objects, the tribal court declines jurisdiction, or the state court finds good cause not to transfer the proceeding. In addition, ICWA permits an Indian child's parent, Indian custodian, or tribe to intervene at any point in an Indian child custody proceeding in state court involving the out-of-home care placement of, or TPR to, the Indian child.

Declination of jurisdiction. Finally, with respect to jurisdiction over an Indian child custody proceeding, ICWA requires a state court to decline jurisdiction and to forthwith return an Indian child to his or her parent or Indian custodian, unless returning the Indian child would subject the Indian child to a substantial and immediate danger or threat of danger, when a petitioner in an Indian child custody proceeding has improperly removed the Indian child from the custody of his or her parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody.

The bill. This bill incorporates those jurisdictional provisions of ICWA into the Children's Code and the Juvenile Justice Code. The bill also does all of the following:

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1. Specifies that the provisions of ICWA and of the Children's Code and Juvenile Justice Code relating to Indian child custody proceedings apply to any Indian child custody proceeding regardless of whether the Indian child is in the 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 a reservation.

2. Prohibits a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) from determining whether those provisions apply to an Indian child custody proceeding based on whether the Indian child is part of an existing Indian family.

3. Permits a juvenile court to find good cause to deny transfer of a proceeding to an Indian child's tribe only if it is shown that: 1) the Indian child is 12 years of age or over and objects to the transfer; 2) 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 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; or 3) the Indian child's tribe has received notice of the proceeding, the tribe has not indicated that the tribe is monitoring the proceeding and may request a transfer at a later date, and because of gross negligence the tribe has not petitioned for a transfer within three months after receiving notice of the proceeding. The juvenile court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe in determining whether good cause exists to deny the transfer.

Out-of-homecare placements and TPR proceedings

Notice. ICWA requires a party seeking an out-of-home care placement of, or TPR to, an Indian child in an involuntary proceeding in state court to notify the Indian child's parent, Indian custodian, and tribe, by registered mail with return receipt requested, of the proceeding and of their right to intervene in the proceeding. Under ICWA, if the identity or location of the parent, Indian custodian, or tribe cannot be determined, notice of the proceeding must be provided to the U.S. secretary of the interior, who then has 15 days after receipt of the notice to provide the notice to the parent, Indian custodian, and tribe. ICWA prohibits an out-of-home care placement or TPR proceeding from being heard until at least ten days after receipt of notice by the parent, Indian custodian, or tribe or by the U.S. secretary of the interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the proceeding.

This bill requires the party seeking an out-of-home care placement of an Indian child in a CHIPS or JIPS proceeding or seeking an involuntary TPR to an Indian child to notify by registered mail, return receipt requested, the Indian child's parent, Indian custodian, and tribe of the first hearing of the proceeding and file the return receipt with the court. The bill requires similar notice to those persons of a change-in-placement proceeding that would remove the Indian child from the home of his or her parent or Indian custodian. For subsequent hearings in a proceeding,

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notice may be provided by mail, personal delivery, or facsimile transmission, but not by electronic mail. The bill prohibits an initial CHIPS, JIPS, or TPR hearing or a change in placement hearing removing an Indian child from the home of his or her parent or Indian custodian from being held until at least ten days after receipt of notice of the hearing by the parent, Indian custodian, or tribe or until at least ten days after receipt of notice of the hearing by the U.S. secretary of the interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the hearing.

Right to counsel. Under ICWA, a parent or Indian custodian who is indigent has the right to court-appointed counsel in any proceeding involving the removal of an Indian child from his or her home, placement of an Indian child in an out-of-home care placement, or TPR to an Indian child. This bill incorporates that right into the Children's Code and the Juvenile Justice Code with respect to a parent 18 years of age or over or an Indian custodian. With respect to a parent under 18 years of age, the bill retains current law, which provides for the appointment of counsel without a determination of indigency.

Active efforts and serious damage findings. ICWA requires a party seeking to effect an out-of-home care placement of, or an involuntary TPR to, an Indian child to satisfy the state court that active efforts have been made to provide remedial services and rehabilitation programs to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. ICWA also prohibits a state court from ordering an out-of-home care placement of, or involuntary TPR to, an Indian child in the absence of a determination, supported by clear and convincing evidence in the case of out-of-home care placement and by evidence beyond a reasonable doubt in the case of TPR, including the testimony of qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

This bill requires a CHIPS or JIPS order or a change-in-placement order removing an Indian child from the home of his or her parent or Indian custodian and placing the Indian child outside the home or a consent decree maintaining an Indian child in a voluntary out-of-home placement to include a finding by the juvenile court or jury, supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and a finding, supported by clear and convincing evidence, that active efforts have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. The bill also requires the juvenile court or jury in an involuntary TPR proceeding to determine if it is proved beyond a reasonable doubt, 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 and if it is proved by clear and convincing evidence that active efforts have been made to prevent the breakup of the Indian child's family and that those efforts have proved unsuccessful. In addition, the bill requires an order extending a CHIPS or JIPS

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dispositional order for an Indian child who is placed outside the home of his or her parent or Indian custodian and a summary of a permanency plan review for such a child to include a determination as to whether active efforts were made to prevent the breakup of the Indian child's family and as to whether those efforts have proved unsuccessful.

Qualified expert witness. The bill defines a “qualified expert witness” as a person who is a member of the Indian child's tribe knowledgeable in the tribe's customs relating to family organization or child-rearing practices, a member of another tribe who is knowledgeable in those customs, a professional person having substantial knowledge of those customs, or a layperson having substantial knowledge of those customs; the bill requires a qualified expert witness to be chosen in that order of preference, unless the party calling the qualified expert witness shows that it has made a diligent effort to secure a qualified expert witness from a higher order of preference. The bill also specifies that the evidence of active efforts to prevent the breakup of the Indian child's family must show 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 to utilize the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members, other individual Indian caregivers, and other culturally appropriate service providers.

Order of placement preference. ICWA further requires an Indian child who is accepted for an out-of-home care placement or a preadoptive placement to be placed in the least restrictive setting which most approximates a family and in which the Indian child's special needs, if any, may be met and requires an Indian child to be placed within reasonable proximity to his or her home, taking into account any special needs of the Indian child. ICWA also requires that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, a foster home licensed, approved, or specified by the Indian child's tribe, an Indian foster home licensed or approved by an authorized non-Indian licensing authority, or an institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the Indian child's needs, unless the Indian child's tribe has established a different order of preference. ICWA also specifies that the standards to be applied in meeting the placement preference requirements of ICWA are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties.

This bill requires the juvenile court, in placing or changing the placement of an Indian child who is in need of protection or services, in placing an Indian child in a preadoptive placement following a TPR, or in placing an Indian child in temporary physical custody, to designate one of the following as the placement for the Indian child, in the order of preference listed, unless the Indian child's tribe has established a different order of preference, good cause is shown for departing from that order of

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preference or, in the case of placing an Indian child in temporary physical custody, emergency conditions necessitate departing from that order of preference:

1. The home of an extended family member of the Indian child.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home or treatment foster home licensed or approved by the Department of Children and Families (DCF), a county department of human services or social services (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.

The bill requires the juvenile court to designate a placement that is 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 the Indian child's special needs. The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

In addition, the bill requires a determination as to whether there is good cause to depart from the order of placement preference requirements of the bill to be based on: 1) the request of a 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 the bill and ICWA; 2) 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; and 3) the unavailability of a suitable placement after diligent efforts have been made to place the child in accordance with those order of placement preference requirements.

Invalid placements. Finally, with respect to involuntary out-of-home care placements and TPR proceedings, ICWA permits the Indian child or the Indian child's parent, Indian custodian, or tribe to petition any court of competent jurisdiction to invalidate an out-of-home care placement or TPR upon a showing that the placement or TPR violated any provision of ICWA relating to out-of-home care placements or TPR.

This bill permits any Indian child who is the subject of an out-of-home care placement or of a TPR proceeding, any parent or Indian custodian of that Indian child, or the Indian child's tribe to move the juvenile court to invalidate that out-of-home care placement or TPR on the grounds that the out-of-home care placement was made or the TPR was ordered in violation of ICWA relating to out-of-home care placements or TPR. If the juvenile court finds that those grounds exist, the juvenile court must invalidate the out-of-home care placement or TPR.

Voluntary out-of-home care placements or TPR; consent; withdrawal

ICWA. Under ICWA, the consent of a parent to an out-of-home care placement of, or a TPR to, an Indian child is not valid unless executed in writing, recorded before

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a judge of a court of competent jurisdiction, and accompanied by the judge's certification that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent. ICWA also requires the court to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Under ICWA, any consent given prior to, or within ten days after, the birth of an Indian child, is not valid. ICWA permits a parent to withdraw his or her consent to a TPR for any reason prior to the entry of a final decree of TPR, or to withdraw his or her consent to an out-of-home care placement at any time, and the Indian child must be returned to the parent. After the entry of a final decree of adoption of an Indian child, the Indian child's parent may withdraw consent to the adoption of the Indian child on the grounds of fraud or duress and may petition the court to vacate the decree. If the court finds that the consent was obtained through fraud or duress, the court must vacate the decree and return the Indian child to his or her parent, except that no adoption that has been effective for at least two years may be invalidated by the withdrawal of consent on the grounds of fraud or duress.

Consent. This bill provides that a voluntary consent to an out-of-home care or placement of, or TPR to, an Indian child is valid only if 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 bill also requires the judge to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Under the bill, any consent to an out-of-home care placement or TPR given prior to or within ten days after the birth of an Indian child is not valid.

Withdrawal of consent. The bill permits a parent who has consented to TPR to an Indian child to withdraw the consent for any reason at any time prior to the entry of a final order terminating parental rights, or a parent who has consented to an out-of-home care placement of an Indian child to withdraw that consent at any time, and the Indian child must be returned to his or her parent unless a CHIPS or guardianship order or a voluntary placement agreement provides otherwise. After the entry of a final order granting adoption, a parent who has consented to TPR to an Indian child may withdraw that consent and move the juvenile court for relief from the order on the grounds that the consent was obtained through fraud or duress, if the motion is filed within two years after the entry of an order granting adoption of the Indian child. If the juvenile court finds that the consent was obtained through fraud or duress, the juvenile court must vacate the TPR order and, if applicable, the order granting adoption.

Adoption

Order of placement preference. ICWA requires, when an Indian child is placed for adoption, that a preference be given, in the absence of good cause to the contrary, to a placement with a member of the Indian child's extended family, other members of the Indian child's tribe, or other Indian families, unless the Indian child's tribe has established a different order of preference. ICWA also specifies that the standards to be applied in meeting the placement preference requirements of ICWA

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are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the parent or extended family maintains social and cultural ties.

This bill requires DCF, a county department, or a child welfare agency, in placing an Indian child for adoption or in investigating or making a recommendation regarding the adoptive placement of an Indian child, and a juvenile court, in determining whether an adoptive placement is in the best interests of an Indian child, to give preference to a placement with one of the following, in the order of preference listed, unless the Indian child's tribe has established a different order of preference or good cause is shown for departing from that order of preference:

1. An extended family member of the Indian child.
2. Another member of the Indian child's tribe.
3. Another Indian family.

The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

In addition, the bill requires a determination as to whether there is good cause to depart from the order of placement preference requirements of the bill to be based on: 1) the request of a 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 the bill and ICWA; 2) any extraordinary physical, mental, or emotional health needs of the Indian child requiring highly specialized treatment services as established by a qualified expert witness; and 3) the unavailability of a suitable placement after active efforts have been made to place the child in accordance with those order of placement preference requirements.

Return of custody. ICWA permits a biological parent or former Indian custodian of an Indian child who has been adopted to petition for return of custody of the Indian child when a final decree of adoption of the Indian child has been vacated or set aside or when the adoptive parents of the Indian child voluntarily consent to TPR to the Indian child. Under ICWA, the state court must grant the petition unless there is a showing that return of custody is not in the best interests of the Indian child. This bill permits the former parent or former Indian custodian of an Indian child who has been adopted to petition for the return of custody of the Indian child when a final order granting adoption of the Indian child is vacated or set aside or the parental rights of all adoptive parents of the Indian child are voluntarily terminated. The juvenile court must grant the petition unless there is a showing of good cause that return of custody is not in the best interest of the Indian child.

Adoptee information. Finally, ICWA requires a state court that enters a final decree of adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the decree, together with such other information as may be necessary to show the name and tribal affiliation of the Indian child, the names and addresses

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of the Indian child's biological parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency having files or information relating to the adoptive placement of the Indian child; and 2) inform an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, upon application, of the tribal affiliation, if any, of the individual's biological parents and with such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. ICWA also provides that, when a biological parent has filed an affidavit requesting that his or her identity remain confidential, the court must include that affidavit with the information provided to the U.S. secretary of the interior.

This bill requires a juvenile court that enters an order granting adoption of an Indian child to: 1) 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 the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's birth parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child; 2) give the birth parent an 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 and include that affidavit with the information provided to the U.S. secretary of the interior; and 3) provide or arrange to provide an Indian adoptee who is 18 years of age or older, upon request, 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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.01 (2) of the statutes is repealed and recreated to read:
2 48.01 (2) In Indian child custody proceedings, the best interests of the Indian
3 child shall be determined in accordance with the federal Indian Child Welfare Act,
4 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of
5 this state for courts and agencies responsible for child welfare to do all of the
6 following:

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1 (a) Cooperate fully with Indian tribes in order to ensure that the federal Indian
2 Child Welfare Act is enforced in this state.

3 (b) Protect the best interests of Indian children and promote the stability and
4 security of Indian tribes and families by doing all of the following:

5 1. Establishing minimum standards for the removal of Indian children from
6 their families and placing those children in out-of-home care placements,
7 preadoptive placements, or adoptive placements that will reflect the unique value of
8 Indian culture.

9 2. Using practices, in accordance with the federal Indian Child Welfare Act, 25
10 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent
11 the voluntary or involuntary out-of-home care placement of Indian children and,
12 when an out-of-home care placement, adoptive placement, or preadoptive
13 placement is necessary, placing an Indian child in a placement that reflects the
14 unique values of the Indian child's tribal culture and that is best able to assist the
15 Indian child in establishing, developing, and maintaining a political, cultural, and
16 social relationship with the Indian child's tribe and tribal community.

17 **SECTION 2.** 48.02 (2) of the statutes is amended to read:

18 48.02 (2) "Child", when used without further qualification, means a person who
19 is less than 18 years of age, except that for purposes of investigating or prosecuting
20 a person who is alleged to have violated a state or federal criminal law or any civil
21 law or municipal ordinance, "child" does not include a person who has attained 17
22 years of age.

23 **SECTION 3.** 48.02 (8d) of the statutes is created to read:

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1 48.02 (8d) “Indian” means any person who is a member of an Indian tribe or
2 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
3 1606.

4 **SECTION 4.** 48.02 (8m) of the statutes is created to read:

5 48.02 (8m) “Indian child’s tribe” means one of the following:

6 (a) The Indian tribe in which an Indian child is a member or eligible for
7 membership.

8 (b) In the case of an Indian child who is a member of or eligible for membership
9 in more than one tribe, the Indian tribe with which the Indian child has the more
10 significant contacts.

11 **SECTION 5.** 48.02 (8p) of the statutes is created to read:

12 48.02 (8p) “Indian custodian” means an Indian person who has legal custody
13 of an Indian child under tribal law or custom or under state law or to whom
14 temporary physical care, custody, and control has been transferred by the parent of
15 the child.

16 **SECTION 6.** 48.02 (8r) of the statutes is created to read:

17 48.02 (8r) “Indian tribe” means any Indian tribe, band, nation, or other
18 organized group or community of Indians that is recognized as eligible for the
19 services provided to Indians by the U.S. secretary of the interior because of Indian
20 status, including any Alaska native village, as defined in 43 USC 1602 (c).

21 **SECTION 7.** 48.02 (13) of the statutes is amended to read:

22 48.02 (13) “Parent” means ~~either~~ a biological parent, a husband who has
23 consented to the artificial insemination of his wife under s. 891.40, or a parent by
24 adoption. If the child is a nonmarital child who is not adopted or whose parents do
25 not subsequently intermarry under s. 767.803, “parent” includes a person

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1 acknowledged under s. 767.805 or a substantially similar law of another state or
 2 adjudicated to be the biological father. “Parent” does not include any person whose
 3 parental rights have been terminated. For purposes of the application of s. 48.028
 4 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a
 5 biological parent, an Indian husband who has consented to the artificial
 6 insemination of his wife under s. 891.40, or ~~a person~~ ^{INSERT SAI-1} who has lawfully adopted an
 7 Indian child, including an adoption under tribal law or custom, and includes, in the
 8 case of a nonmarital child who is not adopted or whose parents do not subsequently
 9 intermarry under s. 767.803, a person acknowledged under s. ~~767.803~~ ^{INS SAI-2} or a
 10 substantially similar law of another state or ~~adjudicated~~ ^{INS. SAI-3} to be the biological father,
 11 but does not include any person whose parental rights have been terminated.

12 **SECTION 8.** 48.02 (15) of the statutes is amended to read:

13 48.02 (15) “Relative” means a parent, stepparent, brother, sister, stepbrother,
 14 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
 15 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
 16 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
 17 marriage, or legal adoption, or the spouse of any person named in this subsection,
 18 even if the marriage is terminated by death or divorce. For purposes of the
 19 application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to
 20 1963, “relative” includes an extended family member, as defined in s. 48.028 (2) (am),
 21 whether by blood, marriage, or adoption, including adoption under tribal law or
 22 custom.

23 **SECTION 9.** 48.02 (18j) of the statutes is created to read:

24 48.02 (18j) “Tribal court” means a court that has jurisdiction over Indian child
 25 custody proceedings, and that is either a court of Indian offenses or a court

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1 established and operated under the code or custom of an Indian tribe, or any other
2 administrative body of an Indian tribe that is vested with authority over Indian child
3 custody proceedings.

4 **SECTION 10.** 48.028 of the statutes is repealed and recreated to read:

5 **48.028 Indian child welfare. (1) DECLARATION OF POLICY.** In Indian child
6 custody proceedings, the best interests of the Indian child shall be determined in
7 accordance with s. 48.01 (2).

8 **(2) DEFINITIONS.** In this section:

9 (a) “Adoptive placement” means the permanent placement of an Indian child
10 for adoption.

11 (am) “Extended family member” means a person who is defined as a member
12 of an Indian child’s extended family by the law or custom of the Indian child’s tribe
13 or, in the absence of such a law or custom, a person who has attained the age of 18
14 years and who is the Indian child’s grandparent, aunt, uncle, brother, sister,
15 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

16 (b) “Former Indian custodian” means a person who was the Indian custodian
17 of an Indian child before termination of parental rights to and adoption of the Indian
18 child.

19 (c) “Former parent” means a person who was the parent of an Indian child
20 before termination of parental rights to and adoption of the Indian child.

21 (d) “Indian child custody proceeding” means a proceeding governed by the
22 federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following
23 may occur:

24 1. An adoptive placement.

25 2. An out-of-home care placement.

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1 3. A preadoptive placement.

2 4. A termination of parental rights, as defined in s. 48.40 (2) to an Indian child.

3 (e) “Out-of-home care placement” means the removal of an Indian child from
4 the home of his or her parent or Indian custodian for temporary placement in a foster
5 home, treatment foster home, group home, residential care center for children and
6 youth, or shelter care facility, in the home of a relative other than a parent, or in the
7 home of a guardian, from which placement the parent or Indian custodian cannot
8 have the child returned upon demand. “Out-of-home care placement” does not
9 include an adoptive placement, a preadoptive placement, or holding an Indian child
10 in custody under ss. 48.19 to 48.21.

11 (f) “Preadoptive placement” means the temporary placement of an Indian child
12 in a foster home, treatment foster home, group home, or residential care center for
13 children and youth, in the home of a relative other than a parent, or in the home of
14 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
15 placement.

16 (g) “Qualified expert witness” means a person who is any of the following:

17 1. A member of the Indian child’s tribe recognized by the Indian child’s tribal
18 community as knowledgeable regarding the tribe’s customs relating to family
19 organization or child-rearing practices.

20 2. A member of another tribe who is knowledgeable regarding the customs of
21 the Indian child’s tribe relating to family organization or child-rearing practices.

22 3. A professional person having substantial education and experience in the
23 person’s professional specialty and having substantial knowledge of the customs,
24 traditions, and values of the Indian child’s tribe relating to family organization and
25 child-rearing practices.

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1 4. A layperson having substantial experience in the delivery of child and family
2 services to Indians and substantial knowledge of the prevailing social and cultural
3 standards and child-rearing practices of the Indian child's tribe.

4 (h) "Reservation" means Indian country, as defined in 18 USC 1151, or any land
5 not covered under that section to which title is either held by the United States in
6 trust for the benefit of an Indian tribe or individual or held by an Indian tribe or
7 individual, subject to a restriction by the United States against alienation.

8 **(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS.** (a) *Applicability.*
9 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
10 to any Indian child custody proceeding regardless of whether the Indian child is in
11 the legal custody or physical custody of an Indian parent, Indian custodian, extended
12 family member, or other person at the commencement of the proceeding and whether
13 the Indian child resides or is domiciled on or off of a reservation. A court assigned
14 to exercise jurisdiction under this chapter may not determine whether this section
15 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian
16 child custody proceeding based on whether the Indian child is part of an existing
17 Indian family.

18 (b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive
19 jurisdiction over any Indian child custody proceeding involving an Indian child who
20 resides or is domiciled within the reservation of the tribe, except when that
21 jurisdiction is otherwise vested in the state by federal law and except as provided in
22 subd. 2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain
23 exclusive jurisdiction regardless of the residence or domicile of the child.

24 2. Subdivision 1. does not prevent an Indian child who resides or is domiciled
25 within a reservation, but who is temporarily located off the reservation, from being

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1 taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent
2 physical harm or damage to the Indian child. The person taking the Indian child into
3 custody or the intake worker shall immediately release the Indian child from custody
4 upon determining that holding the Indian child in custody is no longer necessary to
5 prevent imminent physical damage or harm to the Indian child and shall
6 expeditiously restore the Indian child to his or her parent or Indian custodian,
7 release the Indian child to an appropriate official of the Indian child's tribe, or
8 initiate an Indian child custody proceeding, as may be appropriate.

9 (c) *Transfer of proceedings to tribe.* In any Indian child custody proceeding
10 under this chapter involving an out-of-home placement of, or termination of
11 parental rights to, an Indian child who is not residing or domiciled within the
12 reservation of the Indian child's tribe, the court assigned to exercise jurisdiction
13 under this chapter shall, upon the petition of the Indian child's parent, Indian
14 custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any
15 of the following applies:

- 16 1. A parent of the Indian child objects to the transfer.
- 17 2. The Indian child's tribe does not have a tribal court, or the tribal court of the
18 Indian child's tribe declines jurisdiction.
- 19 3. The court determines that good cause exists to deny the transfer. In
20 determining whether good cause exists to deny the transfer, the court may not
21 consider any perceived inadequacy of the tribal social services department or the
22 tribal court of the Indian child's tribe. The court may determine that good cause
23 exists to deny the transfer only if the person opposing the transfer shows by clear and
24 convincing evidence that any of the following applies:

- 25 a. The Indian child is 12 years of age or over and objects to the transfer.

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1 b. The evidence or testimony necessary to decide the case cannot be presented
2 in tribal court without undue hardship to the parties or the witnesses and that the
3 tribal court is unable to mitigate the hardship by making arrangements to receive
4 the evidence or testimony by use of telephone or live audiovisual means, by hearing
5 the evidence or testimony at a location that is convenient to the parties and
6 witnesses, or by use of other means permissible under the tribal court's rules of
7 evidence.

8 c. The Indian child's tribe received notice of the proceeding under sub. (4) (a),
9 the tribe has not indicated to the court in writing that the tribe is monitoring the
10 proceeding and may request a transfer at a later date, and because of gross
11 negligence the tribe has not petitioned for a transfer within 3 months after receiving
12 notice of the proceeding.

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13 (d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction
14 under this chapter determines that the petitioner in an Indian child custody
15 proceeding has improperly removed the Indian child from the custody of his or her
16 parent or Indian custodian or has improperly retained custody of the Indian child
17 after a visit or other temporary relinquishment of custody, the court shall decline
18 jurisdiction over the petition and immediately return the Indian child to the custody
19 of the parent or Indian custodian, unless the court determines that returning the
20 Indian child to his or her parent or Indian custodian would subject the Indian child
21 to substantial and immediate danger or the threat of that danger.

22 (e) *Intervention.* An Indian child's Indian custodian or tribe may intervene at
23 any point in an Indian child custody proceeding under this chapter involving an
24 out-of-home care placement of, or termination of parental rights to, the Indian child.

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1 (f) *Full faith and credit.* The state shall give full faith and credit to the public
2 acts, records, and judicial proceedings of any Indian tribe that are applicable to an
3 Indian child custody proceeding to the same extent that the state gives full faith and
4 credit to the public acts, records, and judicial proceedings of any other governmental
5 entity.

6 (4) COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding involving
7 the out-of-home care placement of or termination of parental rights to a child whom
8 the court knows or has reason to know is an Indian child, the party seeking the
9 out-of-home care placement or termination of parental rights shall, for the first
10 hearing of the proceeding, notify the Indian child's parent, Indian custodian, and
11 tribe, by registered mail, return receipt requested, of the pending proceeding and of
12 their right to intervene in the proceeding and shall file the return receipt with the
13 court. Notice of subsequent hearings in a proceeding shall be in writing and may be
14 given by mail, personal delivery, or facsimile transmission, but not by electronic mail.
15 If the identity or location of the Indian child's parent, Indian custodian, or tribe
16 cannot be determined, that notice shall be given to the U.S. secretary of the interior
17 in like manner. The first hearing in the proceeding may not be held until at least 10
18 days after receipt of the notice by the parent, Indian custodian, and tribe or until at
19 least ~~10~~ ^{INSERT SAI-4 ✓} days after receipt of the notice by the U.S. secretary of the interior. On
20 request of the parent, Indian custodian, or tribe, the court shall grant a continuance
21 of up to 20 additional days to enable the requester to prepare for that hearing.

22 (b) *Appointment of counsel.* Whenever an Indian child is the subject of a
23 proceeding involving the removal of the Indian child from the home of his or her
24 parent or Indian custodian, placement of the Indian child in an out-of-home care
25 placement, or termination of parental rights to the Indian child, the Indian child's

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1 parent or Indian custodian shall have the right to be represented by court-appointed
2 counsel as provided in s. 48.23 (2g). The court may also, in its discretion, appoint
3 counsel for the Indian child under s. 48.23 (1m) or (3) if the court finds that the
4 appointment is in the best interests of the Indian child.

5 (c) *Examination of reports and other documents.* Each party to a proceeding
6 involving the out-of-home care placement of, termination of parental rights to, or
7 return of custody under sub. (8) (a) of an Indian child shall have the right to examine
8 all reports or other documents filed with the court upon which any decision with
9 respect to the out-of-home care placement, termination of parental rights, or return
10 of custody may be based.

11 (d) *Out-of-home care placement; serious damage and active efforts.* The court
12 may not order an Indian child to be removed from the home of the Indian child's
13 parent or Indian custodian and placed in an out-of-home care placement unless all
14 of the following occur:

15 1. The court or jury finds by clear and convincing evidence, including the
16 testimony of one or more qualified expert witnesses chosen in the order of preference
17 listed in par. (f), that continued custody of the Indian child by the parent or Indian
18 custodian is likely to result in serious emotional or physical damage to the child.

19 2. The court or jury finds by clear and convincing evidence that active efforts,
20 as described in par. (g) 1., have been made to provide remedial services and
21 rehabilitation programs designed to prevent the breakup of the Indian child's family
22 and that those efforts have proved unsuccessful. The court or jury shall make that
23 finding notwithstanding that a circumstance specified in s. 48.355 (2d) (b) 1. to 5.
24 applies.

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1 (e) *Involuntary termination of parental rights; serious damage and active*
2 *efforts.* The court may not order an involuntary termination of parental rights to an
3 Indian child unless all of the following occur:

4 1. The court or jury finds beyond a reasonable doubt, including the testimony
5 of one or more qualified expert witnesses chosen in the order of preference listed in
6 par. (f), that the continued custody of the Indian child by the parent or Indian
7 custodian is likely to result in serious emotional or physical damage to the child.

8 2. The court or jury finds by clear and convincing evidence that active efforts,
9 as described in par. (g) 1., have been made to provide remedial services and
10 rehabilitation programs designed to prevent the breakup of the Indian child's family
11 and that those efforts have proved unsuccessful.

12 (f) *Qualified expert witness; order of preference.* 1. Any party to a proceeding
13 involving the out-of-home placement of, or involuntary termination of parental
14 rights to, an Indian child may call a qualified expert witness. Subject to subd. 2., a
15 qualified expert witness shall be chosen in the following order of preference:

16 a. A member of the Indian child's tribe described in sub. (2) (g) 1.

17 b. A member of another tribe described in sub. (2) (g) 2.

18 c. A professional person described in sub. (2) (g) 3.

19 d. A layperson described in sub. (2) (g) 4.

20 2. A qualified expert witness from a lower order of preference may be chosen
21 only if the party calling the qualified expert witness shows that it has made a diligent
22 effort to secure the attendance of a qualified expert witness from a higher order of
23 preference. A qualified expert witness from a lower order of preference may not be
24 chosen solely because a qualified expert witness from a higher order of preference is
25 able to participate in the Indian child custody proceeding only by telephone or live

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1 audiovisual means as prescribed in s. 807.13 (2). The fact that a qualified expert
2 witness called by one party is from a lower order of preference under subd. 1. than
3 a qualified expert witness called by another party may not be the sole consideration
4 in weighing the testimony and opinions of the qualified expert witnesses. The court
5 shall determine the qualifications of a qualified expert witness as provided in ch. 907.

6 (g) *Active efforts standard.* 1. The court may not order an Indian child to be
7 removed from the home of the Indian child's parent or Indian custodian and placed
8 in an out-of-home care placement unless the evidence of active efforts under par. (d)
9 2. or (e) 2. shows that there has been an ongoing, vigorous, and concerted level of case
10 work and that the active efforts were made in a manner that takes into account the
11 prevailing social and cultural values, conditions, and way of life of the Indian child's
12 tribe and that utilizes the available resources of the Indian child's tribe, tribal and
13 other Indian child welfare agencies, extended family members of the Indian child,
14 other individual Indian caregivers, and other culturally appropriate service
15 providers. The consideration by the court or jury of whether active efforts were made
16 under par. (d) 2. or (e) 2. shall include whether all of the following activities were
17 conducted:

18 a. Representatives designated by the Indian child's tribe with substantial
19 knowledge of the prevailing social and cultural standards and child-rearing practice
20 within the tribal community were requested to evaluate the circumstances of the
21 Indian child's family and to assist in developing a case plan that uses the resources
22 of the tribe and of the Indian community, including traditional and customary
23 support, actions, and services, to address those circumstances.

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1 am. A comprehensive assessment of the situation of the Indian child's family
2 was completed, including a determination of the likelihood of protecting the Indian
3 child's health, safety, and welfare effectively in the Indian child's home.

4 b. Representatives of the Indian child's tribe were identified, notified, and
5 invited to participate in all aspects of the Indian child custody proceeding at the
6 earliest possible point in the proceeding and their advice was actively solicited
7 throughout the proceeding.

8 c. Extended family members of the Indian child, including extended family
9 members who were identified by the Indian child's tribe or parents, were notified and
10 consulted with to identify and provide family structure and support for the Indian
11 child, to assure cultural connections, and to serve as placement resources for the
12 Indian child.

13 d. Arrangements were made to provide natural and unsupervised family
14 interaction in the most natural setting that can ensure the Indian child's safety, as
15 appropriate to the goals of the Indian child's permanency plan, including
16 arrangements for transportation and other assistance to enable family members to
17 participate in that interaction.

18 e. All available family preservation strategies were offered or employed and the
19 involvement of the Indian child's tribe was requested to identify those strategies and
20 to ensure that those strategies are culturally appropriate to the Indian child's tribe.

21 f. Community resources offering housing, financial, and transportation
22 assistance and in-home support services, in-home intensive treatment services,
23 community support services, and specialized services for members of the Indian
24 child's family with special needs were identified, information about those resources

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1 was provided to the Indian child's family, and the Indian child's family was actively
2 assisted or offered active assistance in accessing those resources.

3 g. Monitoring of client progress and client participation in services was
4 provided.

5 h. A consideration of alternative ways of addressing the needs of the Indian
6 child's family was provided, if services did not exist or if existing services were not
7 available to the family.

8 2. If any of the activities specified in subd. 1. a. to h. were not conducted, the
9 person seeking the out-of-home care placement or involuntary termination of
10 parental rights shall submit documentation to the court explaining why the activity
11 was not conducted.

12 (5) VOLUNTARY PROCEEDINGS; CONSENT; WITHDRAWAL. (a) *Out-of-home care*
13 *placement*. A voluntary consent by a parent or Indian custodian to an out-of-home
14 care placement of an Indian child under s. 48.63 (1) or (5) (b) is not valid unless the
15 consent is executed in writing, recorded before a judge, and accompanied by a written
16 certification by the judge that the terms and consequences of the consent were fully
17 explained in detail to and were fully understood by the parent or Indian custodian.
18 The judge shall also certify that the parent or Indian custodian fully understood the
19 explanation in English or that the explanation was interpreted into a language that
20 the parent or Indian custodian understood. Any consent given under this paragraph
21 prior to or within 10 days after the birth of the Indian child is not valid. A parent or
22 Indian custodian who has executed a consent under this paragraph may withdraw
23 the consent for any reason at any time, and the Indian child shall be returned to the
24 parent or Indian custodian. A parent or Indian custodian who has executed a consent

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1 under this paragraph may also move to invalidate the out-of-home care placement
2 under sub. (6).

3 (b) *Termination of parental rights.* A voluntary consent by a parent to a
4 termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent
5 is executed in writing, recorded before a judge, and accompanied by a written
6 certification by the judge that the terms and consequences of the consent were fully
7 explained in detail to and were fully understood by the parent. The judge shall also
8 certify that the parent fully understood the explanation in English or that the
9 explanation was interpreted into a language that the parent understood. Any
10 consent given under this paragraph prior to or within 10 days after the birth of the
11 Indian child is not valid. A parent who has executed a consent under this paragraph
12 may withdraw the consent for any reason at any time prior to the entry of a final
13 order terminating parental rights, and the Indian child shall be returned to his or
14 her parent unless an order or agreement specified in s. 48.368 (1) or 938.368 (1)
15 provides for a different placement. After the entry of a final order terminating
16 parental rights, a parent who has executed a consent under this paragraph may
17 withdraw that consent as provided in par. (c), move to invalidate the termination of
18 parental rights under sub. (6), or move for relief from the judgment under s. 48.46
19 (2).

20 (c) *Withdrawal of consent after order granting adoption.* After the entry of a
21 final order granting adoption of an Indian child, a parent who has consented to
22 termination of parental rights under s. 48.41 (2) (e) may withdraw that consent and
23 move the court for relief from the judgment on the grounds that the consent was
24 obtained through fraud or duress. Any such motion shall be filed within 2 years after
25 the entry of an order granting adoption of the Indian child. A motion under this

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1 subsection does not affect the finality or suspend the operation of the judgment or
2 order terminating parental rights or granting adoption. If the court finds that the
3 consent was obtained through fraud or duress, the court shall vacate the judgment
4 or order terminating parental rights and, if applicable, the order granting adoption
5 and return the Indian child to the custody of the parent, unless an order or agreement
6 specified in s. 48.368 (1) or 938.368 (1) that was in effect prior to the termination of
7 parental rights provides for a different placement.

8 **(6) INVALIDATION OF ACTION.** Any Indian child who is the subject of an
9 out-of-home care placement or of a termination of parental rights proceeding, any
10 parent or Indian custodian from whose custody that Indian child was removed, or the
11 Indian child's tribe may move the court to invalidate that out-of-home care
12 placement or termination of parental rights on the grounds that the out-of-home
13 care placement was made or the termination of parental rights was ordered in
14 violation of 25 USC 1911, 1912, or 1913. If the court finds that those grounds exist,
15 the court shall invalidate the out-of-home care placement or termination of parental
16 rights.

17 **(7) PLACEMENT OF INDIAN CHILD.** (a) *Adoptive placement; preferences.* Subject
18 to pars. (c) and (d), in placing an Indian child for adoption, preference shall be given,
19 in the absence of good cause, as described in par. (e), to the contrary, to a placement
20 with one of the following, in the order of preference listed:

- 21 1. An extended family member of the Indian child.
- 22 2. Another member of the Indian child's tribe.
- 23 3. Another Indian family.

24 (b) *Out-of-home care or preadoptive placement; preferences.* Any Indian child
25 who is accepted for an out-of-home care placement or a preadoptive placement shall

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1 be placed in the least restrictive setting that most approximates a family, that meets
2 the Indian child's special needs, if any, and that is within reasonable proximity to the
3 Indian child's home, taking into account those special needs. Subject to pars. (c) to
4 (e), in placing an Indian child in an out-of-home care placement or a preadoptive
5 placement, preference shall be given, in the absence of good cause, as described in
6 par. (e), to the contrary, to a placement in one of the following, in the order of
7 preference listed:

8 1. The home of an extended family member of the Indian child.

9 2. A foster home or treatment foster home licensed, approved, or specified by
10 the Indian child's tribe.

11 3. An Indian foster home or treatment foster home licensed or approved by the
12 department, a county department, or a child welfare agency.

13 4. A group home or residential care center for children and youth approved by
14 an Indian tribe or operated by an Indian organization that has a program suitable
15 to meet the needs of the Indian child.

16 (bm) *Temporary physical custody; preferences.* Any Indian child who is being
17 held in temporary physical custody under s. 48.205 (1) shall be placed in compliance
18 with par. (b) or, if applicable, par. (c), unless the person responsible for determining
19 the placement finds good cause, as described in par. (e), for departing from the order
20 of placement preference under par. (b) or finds that emergency conditions necessitate
21 departing from that order. When the reason for departing from that order is resolved,
22 the Indian child shall be placed in compliance with the order of placement preference
23 under par. (b) or, if applicable, par. (c).

24 (c) *Tribal or personal preferences.* In placing an Indian child under par. (a), (b),
25 or (bm), if the Indian child's tribe has established, by resolution, an order of

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1 preference that is different from the order specified in par. (a) or (b), the order of
2 preference established by that tribe shall be followed, in the absence of good cause,
3 as described in par. (e), to the contrary, so long as the placement under par. (a) is
4 appropriate for the Indian child's special needs, if any, and the placement under par.
5 (b) or (bm) is the least restrictive setting appropriate for the Indian child's needs as
6 specified in par. (b). When appropriate, the preference of the Indian child or parent
7 shall be considered, and, when a parent who has consented to the placement
8 evidences a desire for anonymity, that desire shall be given weight, in determining
9 the placement.

10 (d) *Social and cultural standards.* The standards to be applied in meeting the
11 placement preference requirements of this subsection shall be the prevailing social
12 and cultural standards of the Indian community in which the Indian child's parents
13 or extended family members reside or with which the Indian child's parents or
14 extended family members maintain social and cultural ties.

15 (e) *Good cause.* 1. Whether there is good cause to depart from the order of
16 placement preference under par. (a), (b), or (c) shall be determined based on any one
17 or more of the following considerations:

18 a. When appropriate, the request of the Indian child's parent or, if the Indian
19 child is of sufficient age and developmental level to make an informed decision, the
20 Indian child, unless the request is made for the purpose of avoiding the application
21 of this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

22 b. Any extraordinary physical, mental, or emotional health needs of the Indian
23 child requiring highly specialized treatment services as established by the testimony
24 of an expert witness, including a qualified expert witness. The length of time that

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1 an Indian child has been in a placement does not, in itself, constitute an
2 extraordinary emotional health need.

3 c. The unavailability of a suitable placement for the Indian child after diligent
4 efforts have been made to place the Indian child in the order of preference under par.
5 (a), (b), or (c).

6 2. The burden of establishing good cause to depart from the order of placement
7 preference under par. (a), (b), or (c) shall be on the party requesting that departure.

8 (f) *Report of placement.* The department, a county department, or a child
9 welfare agency shall maintain a record of each adoptive placement, out-of-home
10 care placement, and preadoptive placement made of an Indian child, evidencing the
11 efforts made to comply with the placement preference requirements specified in this
12 subsection, and shall make that record available at any time on the request of the
13 U.S. secretary of the interior or the Indian child's tribe.

14 **(8) RETURN OF CUSTODY.** (a) *Adoption vacated, set aside, or terminated.* If a final
15 order granting adoption of an Indian child is vacated or set aside or if the parental
16 rights to an Indian child of all adoptive parents of the Indian child are voluntarily
17 terminated, the Indian child's former parent or former Indian custodian may petition
18 for the return of custody of the Indian child. On receipt of a return of custody petition,
19 the court shall set a date for a hearing on the petition that allows reasonable time
20 for the parties to prepare. The court shall provide notice of the hearing to the
21 guardian and legal custodian of the Indian child, to all other interested parties as
22 provided in s. 48.27 (6), and to the Indian child's former parent and former Indian
23 custodian. At the conclusion of the hearing, the court shall grant a petition for the
24 return of custody of the Indian child to the Indian child's former parent or former

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1 Indian custodian unless there is a showing that return of custody is not in the best
2 interests of the Indian child.

3 (b) *Removal from out-of-home care placement.* If an Indian child is removed
4 from an out-of-home care placement for the purpose of placing the Indian child in
5 another out-of-home care placement, a preadoptive placement, or an adoptive
6 placement, the placement shall be made in accordance with this section. Removal
7 of an Indian child from an out-of-home care placement for the purpose of returning
8 the Indian child to the home of the parent or Indian custodian from whose custody
9 the Indian child was originally removed is not subject to this section.

10 (9) ADOPTEE INFORMATION. (a) *Provision of information to U.S. secretary of the*
11 *interior.* At the time a court enters an order granting adoption of an Indian child, the
12 court shall provide the U.S. secretary of the interior with a copy of the order, together
13 with such other records and papers pertaining to the adoption proceeding as may be
14 necessary to provide that secretary with all of the following information:

- 15 1. The name and tribal affiliation of the Indian child.
- 16 2. The names and addresses of the Indian child's birth parents.
- 17 3. The names and addresses of the Indian child's adoptive parents.
- 18 4. The identity of any agency that has in its possession any files or information
19 relating to the adoptive placement of the Indian child.

20 (b) *Confidentiality of parent's identity.* The court shall give the birth parent of
21 an Indian child the opportunity to file an affidavit indicating that the birth parent
22 wishes the U.S. secretary of the interior to maintain the confidentiality of the birth
23 parent's identity. If the birth parent files that affidavit, the court shall include the
24 affidavit with the information provided to the U.S. secretary of the interior under

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1 par. (a), and that secretary shall maintain the confidentiality of the birth parent's
2 identity as required under 25 USC 1951 (a) and (b).

3 (c) *Provision of tribal affiliation to adoptee.* At the request of an Indian adoptee
4 who is 18 years of age or older, the court that entered the order granting adoption of
5 the adoptee shall provide or arrange to provide the adoptee with the tribal affiliation,
6 if any, of the adoptee's birth parents and with such other information as may be
7 necessary to protect any rights accruing to the adoptee as a result of that affiliation.

8 (10) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child
9 Welfare Act, 25 USC 1901 to 1963, supersedes this chapter in any Indian child
10 custody proceeding governed by that act, except that in any case in which this
11 chapter provides a higher standard of protection for the rights of an Indian child's
12 parent or Indian custodian than the rights provided under that act, the court shall
13 apply the standard under this chapter.

14 SECTION 11. 48.028 (2) (e) and (f) of the statutes, as affected by 2009 Wisconsin
15 Act ... (this act), are amended to read:

16 48.028 (2) (e) "Out-of-home care placement" means the removal of an Indian
17 child from the home of his or her parent or Indian custodian for temporary placement
18 in a foster home, ~~treatment foster home~~, group home, residential care center for
19 children and youth, or shelter care facility, in the home of a relative other than a
20 parent, or in the home of a guardian, from which placement the parent or Indian
21 custodian cannot have the child returned upon demand. "Out-of-home care
22 placement" does not include an adoptive placement, a preadoptive placement, or
23 holding an Indian child in custody under ss. 48.19 to 48.21.

24 (f) "Preadoptive placement" means the temporary placement of an Indian child
25 in a foster home, ~~treatment foster home~~, group home, or residential care center for

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1 children and youth, in the home of a relative other than a parent, or in the home of
2 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
3 placement.

4 **SECTION 12.** 48.028 (7) (b) 2. and 3. of the statutes, as affected by 2009
5 Wisconsin Act (this act), are amended to read:

6 48.028 (7) (b) 2. A foster home ~~or treatment foster home~~ licensed, approved, or
7 specified by the Indian child's tribe.

8 3. An Indian foster home ~~or treatment foster home~~ licensed or approved by the
9 department, a county department, or a child welfare agency.

10 **SECTION 13.** 48.13 (intro.) of the statutes is amended to read:

11 **48.13 Jurisdiction over children alleged to be in need of protection or**
12 **services.** (intro.) ~~The~~ Except as provided in s. 48.028 (3), the court has exclusive
13 original jurisdiction over a child alleged to be in need of protection or services which
14 can be ordered by the court, and:

15 **SECTION 14.** 48.14 (intro.) of the statutes is amended to read:

16 **48.14 Jurisdiction over other matters relating to children.** (intro.) ~~The~~
17 Except as provided in s. 48.028 (3), the court has exclusive jurisdiction over:

18 **SECTION 15.** 48.14 (12) of the statutes is created to read:

19 48.14 (12) Proceedings under s. 48.028 (8) for the return of custody of an Indian
20 child to his or her former parent, as defined in s. 48.028 (2) (c), or former Indian
21 custodian, as defined in s. 48.028 (2) (b), following a vacation or setting aside of an
22 order granting adoption of the Indian child or following an order voluntarily
23 terminating parental rights to an Indian child of all adoptive parents of the Indian
24 child.

25 **SECTION 16.** 48.15 of the statutes is amended to read:

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1 **48.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
2 ~~contained in ss. 48.13, 48.133 and 48.14~~ Except as provided in s. 48.028 (3), nothing
3 ~~in this chapter~~ deprives ~~other courts~~ another court of the right to determine the legal
4 custody of ~~children~~ a child by habeas corpus or to determine the legal custody or
5 guardianship of ~~children~~ a child if the legal custody or guardianship is incidental to
6 the determination of ~~causes~~ an action pending in the ~~other courts.~~ But that court.
7 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise
8 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
9 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
10 children and their expectant mothers alleged to come within the provisions of ss.
11 48.133 and 48.14 (5).

12 **SECTION 17.** 48.19 (2) of the statutes is amended to read:

13 48.19 (2) When a child is taken into physical custody as ~~provided in~~ under this
14 section, the person taking the child into custody shall immediately attempt to notify
15 the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the child by the
16 most practical means. The person taking the child into custody shall continue such
17 attempt until the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the
18 child are notified, or the child is delivered to an intake worker under s. 48.20 (3),
19 whichever occurs first. If the child is delivered to the intake worker before the
20 parent, guardian ~~and,~~ legal custodian, and Indian custodian are notified, the intake
21 worker, or another person at his or her direction, shall continue the attempt to notify
22 until the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the child are
23 notified.

24 **SECTION 18.** 48.195 (2) (d) 7. of the statutes is amended to read:

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1 48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an
2 ~~American~~ Indian tribe ~~or band~~ to perform child welfare functions, that is exercising
3 jurisdiction over proceedings relating to the child, an attorney representing the
4 interests of the ~~American~~ Indian tribe ~~or band~~ in those proceedings, or an attorney
5 representing the interests of the child in those proceedings.

6 **SECTION 19.** 48.20 (2) (ag) of the statutes is amended to read:

7 48.20 (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into
8 custody shall make every effort to release the child immediately to the child's parent,
9 guardian ~~or~~, legal custodian, or Indian custodian.

10 **SECTION 20.** 48.20 (2) (b) of the statutes is amended to read:

11 48.20 (2) (b) If the child's parent, guardian ~~or~~, legal custodian, or Indian
12 custodian is unavailable, unwilling, or unable to provide supervision for the child,
13 the person who took the child into custody may release the child to a responsible
14 adult after counseling or warning the child as may be appropriate.

15 **SECTION 21.** 48.20 (3) of the statutes is amended to read:

16 48.20 (3) If the child is released under sub. (2) (b) to (d), the person who took
17 the child into custody shall immediately notify the child's parent, guardian ~~and~~, legal
18 custodian, and Indian custodian of the time and circumstances of the release and the
19 person, if any, to whom the child was released. If the child is not released under sub.
20 (2), the person who took the child into custody shall arrange in a manner determined
21 by the court and law enforcement agencies for the child to be interviewed by the
22 intake worker under s. 48.067 (2), ~~and~~. The person who took the child into custody
23 shall make a statement in writing with supporting facts of the reasons why the child
24 was taken into physical custody and shall give ~~any child 12 years of age or older~~ a
25 copy of the statement ~~in addition to giving a copy to the intake worker.~~ When and

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1 to any child 12 years of age or older. If the intake interview is not done in person, the
2 report may be read to the intake worker.

3 **SECTION 22.** 48.20 (7) (c) (intro.) of the statutes is amended to read:

4 48.20 (7) (c) (intro.) The intake worker may release the child as follows:

5 **SECTION 23.** 48.20 (7) (c) 1. of the statutes is amended to read:

6 48.20 (7) (c) 1. To a parent, guardian ~~or~~, legal custodian, or Indian custodian,
7 or, to a responsible adult if the parent, guardian ~~or~~, legal custodian, or Indian
8 custodian is unavailable, unwilling, or unable to provide supervision for the child,
9 ~~release the child to a responsible adult,~~ counseling or warning the child as may be
10 appropriate; ~~or, if a~~ the child is 15 years of age or older, ~~release the child~~ without
11 immediate adult supervision, counseling or warning the child as may be appropriate;
12 ~~or.~~

13 **SECTION 24.** 48.20 (7) (d) of the statutes is amended to read:

14 48.20 (7) (d) If the child is released from custody, the intake worker shall
15 immediately notify the child's parent, guardian ~~and~~, legal custodian, and Indian
16 custodian of the time and circumstances of the release and the person, if any, to whom
17 the child was released.

18 **SECTION 25.** 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended
19 to read:

20 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
21 child's parent, guardian ~~and~~, legal custodian, and Indian custodian of the reasons for
22 holding the child in custody and of the child's whereabouts unless there is reason to
23 believe that notice would present imminent danger to the child. The parent,
24 guardian ~~and~~, legal custodian, and Indian custodian shall also be notified of the time
25 and place of the detention hearing required under s. 48.21, the nature and possible

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1 consequences of that hearing, ~~and~~ the right to present and cross-examine witnesses
2 at the hearing, ~~and, in the case of a parent or Indian custodian of an Indian child who~~
3 ~~is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2.,~~
4 ~~the right to counsel under s. 48.028 (4) (b).~~ If the parent, guardian ~~or~~, legal custodian,
5 ~~or Indian custodian~~ is not immediately available, the intake worker or another
6 person designated by the court shall provide notice as soon as possible. When the
7 child is 12 years of age or older, the child shall receive the same notice about the
8 detention hearing as the parent, guardian ~~or~~, legal custodian, ~~or Indian custodian.~~
9 The intake worker shall notify both the child and the child's parent, guardian ~~or~~,
10 legal custodian. ~~When, or Indian custodian.~~

11 (b) If the child is an expectant mother who has been taken into custody under
12 s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad
13 litem, shall receive the same notice about the whereabouts of the child expectant
14 mother, about the reasons for holding the child expectant mother in custody and
15 about the detention hearing as the child expectant mother and her parent, guardian
16 ~~or~~, legal custodian, ~~or Indian custodian.~~ The intake worker shall notify the child
17 expectant mother, her parent, guardian ~~or~~, legal custodian, ~~or Indian custodian~~ and
18 the unborn child, by the unborn child's guardian ad litem.

19 **SECTION 26.** 48.207 (1g) of the statutes is created to read:

20 48.207 (1g) An Indian child held in physical custody under s. 48.205 (1) shall
21 be placed in compliance with s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless
22 the person responsible for determining the placement finds good cause, as described
23 in s. 48.028 (7) (e), for departing from the order of placement preference under s.
24 48.028 (7) (b) or finds that emergency conditions necessitate departing from that
25 order. When the reason for departing from that order is resolved, the Indian child

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1 shall be placed in compliance with the order of placement preference under s. 48.028
2 (7) (b) or, if applicable, s. 48.028 (7) (c).

3 **SECTION 27.** 48.21 (3) (am) of the statutes is amended to read:

4 48.21 (3) (am) The parent, guardian, ~~or~~ legal custodian, or Indian custodian
5 may waive his or her right to participate in the hearing under this section. After any
6 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
7 custodian, Indian custodian, or any other interested party for good cause shown.

8 **SECTION 28.** 48.21 (3) (b) of the statutes is amended to read:

9 48.21 (3) (b) If present at the hearing, a copy of the petition or request shall be
10 given to the parent, guardian ~~or~~, legal custodian, or Indian custodian, and to the child
11 if he or she is 12 years of age or older, before the hearing begins. If the child is an
12 expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8.,
13 a copy of the petition shall also be given to the unborn child, through the unborn
14 child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall
15 be given to the child's parent, guardian ~~and~~, legal custodian, and Indian custodian,
16 to the child if he or she is 12 years of age or older and, if the child is an expectant
17 mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn
18 child, through the unborn child's guardian ad litem, ~~in accordance with~~ under s.
19 48.20 (8).

20 **SECTION 29.** 48.21 (3) (d) of the statutes is amended to read:

21 48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
22 the parent, guardian ~~or~~, legal custodian ~~shall be informed by the court,~~ or Indian
23 custodian of the allegations that have been made or may be made, the nature and
24 possible consequences of this hearing as compared to possible future hearings, the
25 right to present, confront, and cross-examine witnesses ~~and the right to present~~

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1 witnesses, and, in the case of a parent or Indian custodian of an Indian child who is
2 the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right
3 to counsel under s. 48.028 (4) (b).

4 **SECTION 30.** 48.21 (3) (e) of the statutes is amended to read:

5 48.21 (3) (e) If the parent, guardian ~~or~~, legal custodian, Indian custodian, or ~~the~~
6 child is not represented by counsel at the hearing and the child is continued in
7 custody as a result of the hearing, the parent, guardian, legal custodian, Indian
8 custodian, or child may request through counsel subsequently appointed or retained
9 or through a guardian ad litem that the order to hold the child in custody be reheard.
10 If the request is made, a rehearing shall take place as soon as possible. ~~Any~~ An order
11 to hold the child in custody shall be ~~subject to rehearing~~ reheard for good cause,
12 whether or not counsel was present.

13 **SECTION 31.** 48.21 (5) (d) 1. of the statutes is renumbered 48.21 (5) (d) and
14 amended to read:

15 48.21 (5) (d) If the judge or circuit court commissioner finds that any of the
16 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
17 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
18 within 30 days after the date of that finding to determine the permanency plan for
19 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
20 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
21 ~~than 5 days before the date of the hearing.~~

22 **SECTION 32.** 48.21 (5) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
23 28, is repealed.

24 **SECTION 33.** 48.21 (5) (d) 3. of the statutes, as affected by 2009 Wisconsin Act
25 28, is repealed.

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1 **SECTION 34.** 48.23 (2) of the statutes is amended to read:

2 48.23 (2) Whenever a child is the subject of a proceeding involving a contested
3 adoption or the involuntary termination of parental rights, any parent under 18
4 years of age who appears before the court shall be represented by counsel; but no such
5 parent may waive counsel. ~~A~~ Except as provided in sub. (2g), a minor parent
6 petitioning for the voluntary termination of parental rights shall be represented by
7 a guardian ad litem. If a proceeding involves a contested adoption or the involuntary
8 termination of parental rights, any parent 18 years old or older who appears before
9 the court shall be represented by counsel; but the parent may waive counsel provided
10 the court is satisfied such waiver is knowingly and voluntarily made.

11 **SECTION 35.** 48.23 (2g) of the statutes is created to read:

12 48.23 (2g) RIGHT OF INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.
13 Whenever an Indian child is the subject of a proceeding involving the removal of the
14 Indian child from the home of his or her parent or Indian custodian, placement of the
15 Indian child in an out-of-home care placement, or termination of parental rights to
16 the Indian child, the Indian child's parent or Indian custodian shall have the right
17 to be represented by counsel as provided in subs. (2) and (4).

18 **SECTION 36.** 48.23 (3) of the statutes is amended to read:

19 48.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. Except in proceedings under
20 s. 48.13, at any time, upon request or on its own motion, the court may appoint
21 counsel for the child or any party, unless the child or the party has or wishes to retain
22 counsel of his or her own choosing. ~~The~~ Except as provided in sub. (2g), the court may
23 not appoint counsel for any party other than the child in a proceeding under s. 48.13.

24 **SECTION 37.** 48.23 (4) of the statutes is amended to read:

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1 48.23 (4) PROVIDING COUNSEL. ~~In any situation under this section in which~~ If
2 a child has a right to be represented by counsel or is provided counsel at the discretion
3 of the court under this section and counsel is not knowingly and voluntarily waived,
4 the court shall refer the child to the state public defender and counsel shall be
5 appointed by the state public defender under s. 977.08 without a determination of
6 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
7 state public defender shall appoint counsel within 24 hours after that referral. Any
8 counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
9 the child in any appeal brought under s. 809.105 unless the child requests
10 substitution of counsel or extenuating circumstances make it impossible for counsel
11 to continue to represent the child. In any situation under sub. (2), (2g), or (2m) in
12 which a parent 18 years of age or over or an adult expectant mother is entitled to
13 representation by counsel; counsel is not knowingly and voluntarily waived; and it
14 appears that the parent or adult expectant mother is unable to afford counsel in full,
15 or the parent or adult expectant mother so indicates; the court shall refer the parent
16 or adult expectant mother to the authority for indigency determinations specified
17 under s. 977.07 (1). In any other situation under this section in which a person has
18 a right to be represented by counsel or is provided counsel at the discretion of the
19 court, competent and independent counsel shall be provided and reimbursed in any
20 manner suitable to the court regardless of the person's ability to pay, except that the
21 court may not order a person who files a petition under s. 813.122 or 813.125 to
22 reimburse counsel for the child who is named as the respondent in that petition.

23 **SECTION 38.** 48.235 (4) (a) 7. of the statutes is amended to read:

24 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
25 under s. 48.028 or 48.46.

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1 **SECTION 39.** 48.235 (4m) (a) 7. of the statutes is amended to read:

2 48.235 (4m) (a) 7. Petition for relief from a judgment terminating parental
3 rights under s. 48.028 or 48.46 after the child is born.

4 **SECTION 40.** 48.255 (1) (cm) of the statutes is amended to read:

5 48.255 (1) (cm) Whether the child may be subject to the federal Indian ~~child~~
6 ~~welfare act~~ Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the child may be
7 subject to that act, the names and addresses of the child's Indian custodian, if any,
8 and Indian tribe, if known.

9 **SECTION 41.** 48.255 (1) (g) of the statutes is created to read:

10 48.255 (1) (g) If the petitioner knows or has reason to know that the child is an
11 Indian child, and if the child has been removed from the home of his or her parent
12 or Indian custodian, reliable and credible information showing that continued
13 custody of the child by the child's parent or Indian custodian is likely to result in
14 serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and
15 reliable and credible information showing that active efforts under s. 48.028 (4) (d)
16 2. have been made to prevent the breakup of the Indian child's family and that those
17 efforts have proved unsuccessful. The petition shall set forth with specificity both
18 the information required under this paragraph and the information required under
19 par. (f).

20 **SECTION 42.** 48.255 (1m) (d) of the statutes is amended to read:

21 48.255 (1m) (d) Whether the unborn child, when born, may be subject to the
22 federal Indian Child Welfare Act, 25 USC ~~1911~~ 1901 to 1963, and, if the unborn child
23 may be subject to that act, the name and address of the Indian tribe in which the
24 unborn child may be eligible for affiliation when born, if known.

25 **SECTION 43.** 48.255 (1m) (g) of the statutes is created to read:

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1 48.255 (1m) (g) If the petitioner knows or has reason to know that the expectant
2 mother is an Indian child, and if the child expectant mother has been removed from
3 the home of her parent or Indian custodian, reliable and credible information
4 showing that continued custody of the child expectant mother by her parent or
5 Indian custodian is likely to result in serious emotional or physical damage to the
6 child expectant mother under s. 48.028 (4) (d) 1. and reliable and credible
7 information showing that active efforts under s. 48.028 (4) (d) 2. have been made to
8 prevent the breakup of the Indian child's family and that those efforts have proved
9 unsuccessful. The petition shall set forth with specificity both the information
10 required under this paragraph and the information required under par. (f).

11 **SECTION 44.** 48.255 (2) of the statutes is amended to read:

12 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) ~~and, (f), and (g)~~
13 or (1m) (a) to (d) ~~and, (f), and (g)~~ are not known or cannot be ascertained by the
14 petitioner, the petition shall so state.

15 **SECTION 45.** 48.255 (4) of the statutes is amended to read:

16 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
17 child is 12 years of age or over and to the parents, guardian, legal custodian and
18 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
19 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
20 and physical custodian and the unborn child by the unborn child's guardian ad litem
21 or to the adult expectant mother, the unborn child through the unborn child's
22 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A- If~~
23 the child is an Indian child who has been removed from the home of his or her parent
24 or Indian custodian or the unborn child will be an Indian child when born, a copy of
25 a petition under sub. (1) or (1m) shall also be given to the ~~tribe or band with which~~

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1 ~~the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian tribe
2 with which the unborn child may be eligible for affiliation when born, ~~if the child is~~
3 ~~an Indian child or the unborn child may be an Indian child when born.~~

4 **SECTION 46.** 48.27 (3) (a) 1. of the statutes is amended to read:

5 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
6 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
7 who is a child, the court shall ~~also~~ notify, under s. 48.273, the child, any parent,
8 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
9 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by
10 the unborn child's guardian ad litem, if applicable, and any person specified in par.
11 (b), (d), or (e), if applicable, of all hearings involving the child except hearings on
12 motions for which notice ~~need only~~ must be provided only to the child and his or her
13 counsel. ~~When~~ If parents who are entitled to notice have the same place of residence,
14 notice to one ~~shall constitute~~ constitutes notice to the other. The first notice to any
15 interested party, foster parent, treatment foster parent, or other physical custodian
16 described in s. 48.62 (2) shall be ~~written in writing~~ and may have a copy of the petition
17 attached to it. ~~Thereafter, notice of~~ Notices of subsequent hearings may be given by
18 telephone at least 72 hours before the time of the hearing. The person giving
19 telephone notice shall place in the case file a signed statement of the time notice was
20 given and the person to whom he or she spoke.

21 **SECTION 47.** 48.27 (3) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts
22 28 and (this act), is repealed and recreated to read:

23 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
24 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
25 who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian,

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1 and legal custodian of the child, any foster parent or other physical custodian
2 described in s. 48.62 (2) of the child, the unborn child by the unborn child's guardian
3 ad litem, if applicable, and any person specified in par. (b), (d), or (e), if applicable,
4 of all hearings involving the child except hearings on motions for which notice must
5 be provided only to the child and his or her counsel. If parents who are entitled to
6 notice have the same place of residence, notice to one constitutes notice to the other.
7 The first notice to any interested party, foster parent, or other physical custodian
8 described in s. 48.62 (2) shall be in writing and may have a copy of the petition
9 attached to it. Notices of subsequent hearings may be given by telephone at least 72
10 hours before the time of the hearing. The person giving telephone notice shall place
11 in the case file a signed statement of the time notice was given and the person to
12 whom he or she spoke.

13 **SECTION 48.** 48.27 (3) (d) of the statutes is amended to read:

14 48.27 (3) (d) If the petition that was filed relates to facts concerning a situation
15 under s. 48.13 or 48.133 involving an Indian child who has been removed from the
16 home of his or her parent or Indian custodian or a situation under s. 48.133
17 concerning involving an unborn child who, when born, will be an Indian child, the
18 court shall notify, under s. 48.273, the Indian child's Indian custodian and tribe or
19 the Indian tribe or band with which the unborn child ~~will be affiliated~~ may be eligible
20 for affiliation when born and that Indian custodian or tribe or band may, ~~at the court's~~
21 ~~discretion,~~ intervene at any point in the proceeding ~~before the unborn child is born.~~

22 **SECTION 49.** 48.27 (4) (a) 2. of the statutes is amended to read:

23 48.27 (4) (a) 2. Advise the child and any party, if applicable, of his or her right
24 to legal counsel regardless of ability to pay.

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1 **SECTION 50.** 48.273 (1) of the statutes is renumbered 48.273 (1) (a) and
2 amended to read:

3 48.273 (1) (a) ~~Service~~ Except as provided in pars. (ag), (ar), and (b), service of
4 summons or notice required by s. 48.27 may be made by mailing a copy ~~thereof of the~~
5 summons or notice to the ~~persons~~ person summoned or notified. If

6 (ar) Except as provided in par. (b), if the persons fail person fails to appear at
7 the hearing or otherwise to acknowledge service, a continuance shall be granted,
8 ~~except where the court determines otherwise because the child is in secure custody,~~
9 and service shall be made personally by delivering to the ~~persons~~ person a copy of the
10 summons or notice; except that if the court ~~is satisfied~~ determines that it is
11 impracticable to serve the summons or notice personally, ~~it~~ the court may ~~make an~~
12 order ~~providing for the service of the summons or notice~~ by certified mail addressed
13 to the last-known ~~addresses~~ address of the ~~persons.~~ person.

14 (b) The court may refuse to grant a continuance when the child is being held
15 in secure custody, but ~~in such a case the court~~ if the court so refuses, the court shall
16 order that service of notice of the next hearing be made personally or by certified mail
17 to the last-known address of the person who failed to appear at the hearing.

18 (c) Personal service shall be made at least 72 hours before ~~the time of the~~
19 hearing. Mail shall be sent at least 7 days before ~~the time of the~~ hearing, except
20 where as follows:

21 1. When the petition is filed under s. 48.13 and the person to be notified lives
22 outside the state, ~~in which case the mail shall be sent at least 14 days before the time~~
23 ~~of the hearing.~~

24 **SECTION 51.** 48.273 (1) (ag) of the statutes is created to read:

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SECTION 51

1 48.273 (1) (ag) In a situation described in s. 48.27 (3) (d) involving an Indian
2 child, service of summons or notice required by s. 48.27 to the Indian child’s parent,
3 Indian custodian, or tribe shall be made as provided in s. 48.028 (4) (a).

4 **SECTION 52.** 48.273 (1) (c) 2. of the statutes is created to read:

5 48.273 (1) (c) 2. When a petition under s. 48.13 or 48.133 involves an Indian
6 child who has been removed from the home of his or her parent or Indian custodian
7 and the person to be notified is the Indian child’s parent, Indian custodian, or tribe,
8 the mail shall be sent so that it is received by the person to be notified at least 10 days
9 before the hearing or, if the identity or location of the person to be notified cannot be
10 determined, by the U.S. secretary of the interior at least 10 days before the hearing.

✓
INSERT SA1-5

11 **SECTION 53.** 48.299 (6) (d) of the statutes is amended to read:

12 48.299 (6) (d) The court may stay the proceedings under this chapter pending
13 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
14 determines that the paternity proceedings will not unduly delay the proceedings
15 under this chapter and the determination of paternity is necessary to the court’s
16 disposition of the child if the child is found to be in need of protection or services or
17 if the court determines or has reason to know that the paternity proceedings may
18 result in a finding that the child is an Indian child and in a petition by the child’s
19 parent, Indian custodian, or tribe for transfer of the proceeding to the jurisdiction of
20 the tribe.

21 **SECTION 54.** 48.299 (9) of the statutes is created to read:

22 48.299 (9) If at any point in the proceeding the court determines or has reason
23 to know that the child is an Indian child, the court shall provide notice of the
24 proceeding to the child’s parent, Indian custodian, and tribe in the manner specified
25 in s. 48.028 (4) (a). The next hearing in the proceeding may not be held until at least

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1 10 days after receipt of the notice by the parent, Indian custodian, and tribe or, if the
2 identity or location of the parent, Indian custodian, ~~expectant mother~~, or tribe cannot
3 be determined, until at least ~~10~~ days after receipt of the notice by the U.S. secretary
4 of the interior. On request of the parent, Indian custodian, or tribe, the court shall
5 grant a continuance of up to 20 additional days to enable the requester to prepare
6 for that hearing.

7 **SECTION 55.** 48.30 (1) of the statutes is amended to read:

8 48.30 (1) Except as provided in ~~this subsection~~ s. 48.299 (9), the hearing to
9 determine whether any party wishes to contest an allegation that the child or unborn
10 child is in need of protection or services shall take place on a date which allows
11 reasonable time for the parties to prepare but is within 30 days after the filing of a
12 petition for a child or an expectant mother who is not being held in secure custody
13 or within 10 days after the filing of a petition for a child who is being held in secure
14 custody.

15 **SECTION 56.** 48.30 (2) of the statutes is amended to read:

16 48.30 (2) At the commencement of the hearing under this section the child and
17 the parent, guardian ~~or~~, legal custodian, or Indian custodian; the child expectant
18 mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian, and the unborn
19 child through the unborn child's guardian ad litem; or the adult expectant mother
20 and the unborn child through the unborn child's guardian ad litem; shall be advised
21 of their rights as specified in s. 48.243 and shall be informed that a request for a jury
22 trial or for a substitution of judge under s. 48.29 must be made before the end of the
23 plea hearing or ~~be~~ is waived. Nonpetitioning parties, including the child, shall be
24 granted a continuance of the plea hearing if they wish to consult with an attorney
25 on the request for a jury trial or substitution of a judge.