



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 02C of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

**2009 LRB-0150**

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1           **SECTION 204.** 938.02 (8p) of the statutes is created to read:

2           938.02 **(8p)** “Indian custodian” means an Indian person who has legal custody  
3 of an Indian juvenile under tribal law or custom or under state law or to whom  
4 temporary physical care, custody, and control has been transferred by the parent of  
5 the juvenile.

6           **SECTION 205.** 938.02 (8r) of the statutes is created to read:

7           938.02 **(8r)** “Indian tribe” means any Indian tribe, band, nation, or other  
8 organized group or community of Indians that is recognized as eligible for the  
9 services provided to Indians by the U.S. secretary of the interior because of Indian  
10 status, including any Alaska native village, as defined in 43 USC 1602 (c).

11           **SECTION 206.** 938.02 (9m) of the statutes is renumbered 938.02 (8b).

12           **SECTION 207.** 938.02 (10m) of the statutes is amended to read:

13           938.02 **(10m)** “Juvenile”, when used without further qualification, means a  
14 person who is less than 18 years of age, except that for purposes of investigating or  
15 prosecuting a person who is alleged to have violated a state or federal criminal law  
16 or any civil law or municipal ordinance, “juvenile” does not include a person who has  
17 attained 17 years of age.

18           **SECTION 208.** 938.02 (12m) of the statutes is amended to read:

19           938.02 **(12m)** “Off-reservation trust land” means land in this state that is held  
20 in trust by the federal government for the benefit of a an Indian tribe or ~~an American~~  
21 ~~Indian individual~~ and that is located outside the boundaries of ~~a~~ an Indian tribe’s  
22 reservation.

23           **SECTION 209.** 938.02 (13) of the statutes is amended to read:

24           938.02 **(13)** “Parent” means either a biological parent, a husband who has  
25 consented to the artificial insemination of his wife under s. 891.40, or a parent by

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1 adoption, including, in the case of an Indian juvenile, an adoption under tribal law  
2 or custom. If the juvenile is a nonmarital child who is not adopted or whose parents  
3 do not subsequently intermarry under s. ~~767.60~~, "parent" includes a person  
4 acknowledged under s. ~~767.62(1)~~ <sup>767.905 (Plan)</sup> or a substantially similar law of another state or  
5 adjudicated to be the biological father. "Parent" does not include any person whose  
6 parental rights have been terminated.

7 **SECTION 210.** 938.02 (15) of the statutes ~~as amended by 2005 Wisconsin Act 232,~~  
8 is amended to read: as defined in s. 938.028 (2) (a)

9 938.02 (15) "Relative" means a parent, stepparent, brother, sister, stepbrother,  
10 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd  
11 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding  
12 generation as denoted by the prefix of grand, great, or great-great, whether by blood,  
13 marriage, or legal adoption, or the spouse of any person named in this subsection,  
14 even if the marriage is terminated by death or divorce. "Relative" also includes, in  
15 the case of an Indian juvenile, an extended family member, whether by blood,  
16 marriage, or adoption, including adoption under tribal law or custom.

17 **SECTION 211.** 938.02 (15c) of the statutes is repealed and recreated to read:

18 938.02 (15c) "Reservation" means Indian country, as defined in 18 USC 1151,  
19 or any land not covered under that section to which the title is either held by the  
20 United States in trust for the benefit of an Indian tribe or individual or held by an  
21 Indian tribe or individual, subject to a restriction by the United States against  
22 alienation.

23 **SECTION 212.** 938.02 (18g) of the statutes is repealed.

24 **SECTION 213.** 938.02 (18j) of the statutes is created to read:

1           938.02 (18j) "Tribal court" means a court that has jurisdiction over juvenile  
2 custody proceedings, and that is either a court of Indian offenses or a court  
3 established and operated under the code or custom of an Indian tribe, or any other  
4 administrative body of an Indian tribe that is vested with authority over Indian  
5 juvenile custody proceedings.

6           ~~SECTION 214. 938.028 of the statutes, as affected by 2005 Wisconsin Act 344,~~  
7 is amended to read:

8           **938.028 Custody of Indian children juveniles.** ~~The federal Indian Child~~  
9 ~~Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any child Indian~~  
10 ~~juvenile custody proceeding governed by that act, except that in any case in which~~  
11 ~~this chapter provides a higher standard of protection for the rights of an Indian~~  
12 ~~juvenile's parent or Indian custodian than the rights provided under that act, the~~  
13 ~~court shall apply the standard under this chapter.~~

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14           ~~SECTION 215. 938.13 (intro.) of the statutes, as affected by 2005 Wisconsin Act~~  
15 ~~344,~~ is amended to read: 938.028 (3)

16           **938.13 Jurisdiction over juveniles alleged to be in need of protection**  
17 **or services.** (intro.) The Except as provided in s. ~~938.15~~, the court has exclusive  
18 original jurisdiction over a juvenile alleged to be in need of protection or services  
19 which can be ordered by the court if any of the following conditions applies:

20           ~~SECTION 216. 938.15 of the statutes, as affected by 2005 Wisconsin Act 344,~~ is  
21 amended to read: 938.028 (3)

22           **938.15 Jurisdiction of other courts to determine legal custody.** Nothing  
23 Except as provided in s. ~~938.15~~, nothing in this chapter deprives another court of  
24 the right to determine the legal custody of juveniles by habeas corpus or to determine  
25 the legal custody or guardianship of a juvenile if the legal custody or guardianship

938.028 (3)

1 is incidental to the determination of an action pending in that court. ~~But~~ Except as  
2 provided in s. ~~938.155~~, the jurisdiction of the court assigned to exercise jurisdiction  
3 under this chapter and ch. 48 is paramount in all cases involving juveniles alleged  
4 to come within the provisions of ss. 938.12 to 938.14.

5 ~~SECTION 217. 938.155 of the statutes is created to read:~~

6 **938.155 Jurisdiction over Indian juveniles. (1) EXCLUSIVE JURISDICTION.**

7 (a) An Indian tribe shall have exclusive jurisdiction over any Indian juvenile custody  
8 proceeding involving an Indian juvenile who resides or is domiciled within the  
9 reservation of the tribe, except when that jurisdiction is otherwise vested in the state  
10 by federal law and except as provided in par. (b). If an Indian juvenile is a ward of  
11 a tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the  
12 residence or domicile of the juvenile.

13 (b) Paragraph (a) does not prevent an Indian juvenile who resides or is  
14 domiciled within a reservation, but who is temporarily located off the reservation,  
15 from being taken into and held in custody under ss. 938.19 to 938.21 in order to  
16 prevent imminent physical harm or damage to the Indian juvenile. The person  
17 taking the Indian juvenile into custody or the intake worker shall immediately  
18 release the Indian juvenile from custody upon determining that continuing the  
19 Indian juvenile in custody is no longer necessary to prevent imminent physical  
20 damage or harm to the Indian juvenile.

21 **(2) TRANSFER OF PROCEEDINGS TO TRIBE.** In any Indian juvenile custody  
22 proceeding under this chapter involving an Indian juvenile who is not residing or  
23 domiciled within the reservation of the Indian juvenile's tribe, the court assigned to  
24 exercise jurisdiction under this chapter shall, upon the petition of the Indian

1 juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the  
2 jurisdiction of the tribe unless any of the following applies:

3 (a) A parent of the Indian juvenile objects to the transfer.

4 (b) The tribal court of the Indian juvenile's tribe declines jurisdiction.

5 (c) The court determines that good cause exists to deny the transfer.

6 **(3) DECLINATION OF JURISDICTION.** If the court determines that the petitioner in  
7 an Indian juvenile custody proceeding has improperly removed the Indian juvenile  
8 from the custody of his or her parent or Indian custodian or has improperly retained  
9 custody of the Indian juvenile after a visit or other temporary relinquishment of  
10 custody, the court shall decline jurisdiction over the petition and immediately return  
11 the Indian juvenile to the custody of the parent or Indian custodian, unless the court  
12 determines that returning the Indian juvenile to his or her parent or Indian  
13 custodian would subject the Indian juvenile to substantial and immediate danger or  
14 the threat of that danger.

15 **(4) INTERVENTION.** AN Indian juvenile's Indian custodian or tribe may intervene  
16 at any point in any Indian juvenile custody proceeding under this chapter.

17 **(5) FULL FAITH AND CREDIT.** The court shall give full faith and credit to the public  
18 acts, records, and judicial proceedings of any Indian tribe that are applicable to an  
19 Indian juvenile custody proceeding to the same extent that the state gives full faith  
20 and credit to the public acts, records, and judicial proceedings of any other  
21 governmental entity.

22 **SECTION 218.** 938.185 (4) (title) of the statutes, as created by 2005 Wisconsin

23 **Act 344** is amended to read:

24 938.185 (4) (title) AMERICAN INDIAN JUVENILES.

25 **SECTION 219.** 938.185 (4) (intro.) of the statutes is amended to read:

1 938.185 (4) (intro.) Venue for a proceeding under s. 938.12 or 938.13 (12) based  
2 on an allegation that an ~~American~~ Indian juvenile has committed a delinquent act  
3 may not be in the county specified in sub. (1) (a), unless that county is specified in  
4 sub. (1) (b) or (c), if all of the following circumstances apply:

5 SECTION 220. 938.185 (4) (a) of the statutes is amended to read:

6 938.185 (4) (a) At the time of the alleged delinquent act the juvenile was under  
7 an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,  
8 physical placement or visitation with the juvenile's parent, or permanent  
9 guardianship.

10 SECTION 221. 938.185 (4) (b) of the statutes is amended to read:

11 938.185 (4) (b) At the time of the alleged delinquent act the juvenile was  
12 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe  
13 of the tribal court and any off-reservation trust land of either that Indian tribe or a  
14 member of that Indian tribe as a direct consequence of a tribal court order under par.  
15 (a), including a tribal court order placing the juvenile in the home of a relative of the  
16 juvenile who on or after the date of the tribal court order resides physically outside  
17 the boundaries of a reservation and off-reservation trust land.

18 SECTION 222. 938.19 (2) of the statutes ~~as affected by 2005 Wisconsin Act 344,~~  
19 is amended to read:

20 938.19 (2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN  
21 CUSTODIAN. When a juvenile is taken into physical custody under this section, the  
22 person taking the juvenile into custody shall immediately attempt to notify the  
23 parent, guardian, <sup>^</sup>and <sup>^</sup>legal custodian, and Indian custodian of the juvenile by the  
24 most practical means. The person taking the juvenile into custody shall continue  
25 such attempt until the parent, guardian, <sup>^</sup>and <sup>^</sup>legal custodian, and Indian custodian

1 of the juvenile are notified, or the juvenile is delivered to an intake worker under s.  
2 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker  
3 before the parent, guardian, and legal custodian, and Indian custodian are notified,  
4 the intake worker, or another person at his or her direction, shall continue the  
5 attempt to notify until the parent, guardian, and legal custodian, and Indian  
6 custodian of the juvenile are notified.

7 SECTION 223. 938.20 (2) (ag) of the statutes is amended to read:

8 938.20 (2) (ag) Except as provided in pars. (b) to (g), a person taking a juvenile  
9 into custody shall make every effort to release the juvenile immediately to the  
10 juvenile's parent, guardian or legal custodian, or Indian custodian.

11 SECTION 224. 938.20 (2) (b) of the statutes is amended to read:

12 938.20 (2) (b) If the juvenile's parent, guardian or legal custodian, or Indian  
13 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,  
14 the person who took the juvenile into custody may release the juvenile to a  
15 responsible adult after counseling or warning the juvenile as may be appropriate.

16 SECTION 225. 938.20 (3) of the statutes, ~~as affected by 2005 Wisconsin Act 344,~~  
17 is amended to read:

18 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN  
19 CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the  
20 person who took the juvenile into custody shall immediately notify the juvenile's  
21 parent, guardian, and legal custodian, and Indian custodian of the time and  
22 circumstances of the release and the person, if any, to whom the juvenile was  
23 released. If the juvenile is not released under sub. (2), the person who took the  
24 juvenile into custody shall arrange in a manner determined by the court and law  
25 enforcement agencies for the juvenile to be interviewed by the intake worker under

1 s. 938.067 (2). The person who took the juvenile into custody shall make a statement  
2 in writing with supporting facts of the reasons why the juvenile was taken into  
3 physical custody and shall give a copy of the statement to the intake worker and to  
4 any juvenile 10 years of age or older. If the intake interview is not done in person,  
5 the report may be read to the intake worker.

6 **SECTION 226.** 938.20 (7) (c) 1. of the statutes ~~as affected by 2005 Wisconsin Act~~

7 344 is amended to read:

8 938.20 (7) (c) 1. To a parent, guardian, ~~or~~ legal custodian, or Indian custodian,  
9 or to a responsible adult if the parent, guardian, ~~or~~ legal custodian, or Indian  
10 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,  
11 counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15  
12 years of age or older, without immediate adult supervision, counseling or warning  
13 the juvenile as may be appropriate.

14 **SECTION 227.** 938.20 (7) (d) of the statutes is amended to read:

15 938.20 (7) (d) If the juvenile is released from custody, the intake worker shall  
16 immediately notify the juvenile's parent, guardian ~~and~~, legal custodian, and Indian  
17 custodian of the time and circumstances of the release and the person, if any, to whom  
18 the juvenile was released.

19 **SECTION 228.** 938.20 (8) (a) of the statutes ~~as affected by 2005 Wisconsin Act~~

20 344 is amended to read:

21 938.20 (8) (a) If a juvenile is held in custody, the intake worker shall notify the  
22 juvenile's parent, guardian, ~~and~~, legal custodian, and Indian custodian of the  
23 reasons for holding the juvenile in custody and of the juvenile's whereabouts unless  
24 there is reason to believe that notice would present imminent danger to the juvenile.  
25 The parent, guardian, ~~and~~, legal custodian, and Indian custodian shall also be

<sup>Juvenile</sup>  
<sup>and, in the case of a parent or Indian custodian</sup>  
~~of an Indian child,~~ <sup>the right to counsel under s. 938.28 (4)(b)</sup>  
~~regardless of ability to pay~~

1 notified of the time and place of the detention hearing required under s. 938.21, the  
 2) nature and possible consequences of the hearing, <sup>keep</sup> ~~the right to counsel under s. 938.23~~  
 3) ~~regardless of ability to pay~~ and the right to present and cross-examine witnesses at  
 4 the hearing. If the parent, guardian, or legal custodian, or Indian custodian is not  
 5 immediately available, the intake worker or another person designated by the court  
 6 shall provide notice as soon as possible.

7 SECTION 229. 938.21 (2) (title) of the statutes is amended to read:

8 938.21 (2) (title) PROCEEDINGS CONCERNING RUNAWAY OR DELINQUENT JUVENILES.

9 SECTION 230. 938.21 (2) (ag) of the statutes is amended to read:

10 938.21 (2) (ag) Proceedings concerning a juvenile who comes within the  
 11 jurisdiction of the court under s. 938.12 or 938.13 (7) or (12) or (14) shall be conducted  
 12 according to this subsection.

13 SECTION 231. 938.21 (3) (ag) of the statutes is amended to read:

14 938.21 (3) (ag) Proceedings concerning a juvenile who comes within the  
 15 jurisdiction of the court under s. 938.13 (4), (6), (6m), or (14) (7) shall be conducted  
 16 according to this subsection.

17 SECTION 232. 938.21 (3) (am) of the statutes is amended to read:

18 938.21 (3) (am) The parent, guardian, or legal custodian, or Indian custodian  
 19 may waive his or her right to participate in the hearing under this section. After any  
 20 waiver, a rehearing shall be granted at the request of the parent, guardian, legal  
 21 custodian, Indian custodian, or any other interested party for good cause shown.

22 SECTION 233. 938.21 (3) (b) of the statutes, ~~as affected by 2005 Wisconsin Act~~

23 ~~344~~, is amended to read:

24 938.21 (3) (b) If present at the hearing, a copy of the petition or request shall  
 25 be given to the parent, guardian, or legal custodian, or Indian custodian, and to the

1 juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice  
2 of the hearing shall be given to the juvenile's parent, guardian, and legal custodian,  
3 and Indian custodian and to the juvenile if he or she is 12 years of age or older under  
4 s. 938.20 (8).

5 SECTION 234. 938.21 (3) (d) of the statutes, ~~as affected by 2005 Wisconsin Act~~

6 ~~344~~, is amended to read: in the case of a parent or Indian custodian of an  
Indian juvenile, the right to counsel under s. 938.23

7 938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform (4)(b)  
8 the parent, guardian, or legal custodian, or Indian custodian of the allegations that regardless of  
9 have been made or may be made, the nature and possible consequences of this ability to  
10 hearing as compared to possible future hearings, ~~the right to counsel under s. 938.23~~ pay

11 ~~regardless of ability to pay~~ the right to presently confront and cross-examine witnesses, and  
12 ~~the right to present~~ witnesses.

13 SECTION 235. 938.21 (3) (e) of the statutes, ~~as affected by 2005 Wisconsin Act~~

14 ~~344~~ is amended to read:

15 938.21 (3) (e) If the parent, guardian, or legal custodian, Indian custodian, or  
16 the juvenile is not represented by counsel at the hearing and if the juvenile is  
17 continued in custody as a result of the hearing, the parent, guardian, legal custodian,  
18 Indian custodian, or juvenile may request through counsel subsequently appointed  
19 or retained or through a guardian ad litem that the order to hold the juvenile in  
20 custody be reheard. If the request is made, a rehearing shall take place as soon as  
21 possible. An order to hold the juvenile in custody shall be reheard for good cause,  
22 whether or not counsel was present.

23 SECTION 236. 938.21 (5) (d) 1. of the statutes, ~~as affected by 2005 Wisconsin Act~~

24 ~~344~~ is renumbered 938.21 (5) (d) and amended to read:

1           938.21 (5) (d) If the court finds that any of the circumstances specified in s.  
2           938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing  
3           under s. 938.38 (4m) within 30 days after the date of that finding to determine the  
4           permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~  
5           ~~agency responsible for preparing the permanency plan shall file the permanency~~  
6           ~~plan with the court not less than 5 days before the date of the hearing.~~

7           **SECTION 237.** 938.21 (5) (d) 2. of the statutes is repealed.

8           **SECTION 238.** 938.21 (5) (d) 3. of the statutes is repealed.

9           ~~**SECTION 239.** 938.23 (2) of the statutes is created to read:~~

10           ~~938.23 (2) RIGHT OF PARENTS TO COUNSEL. (a) Whenever a juvenile is alleged to~~  
11           ~~be in need of protection or services under s. 938.13 (4), (6), (6m), or (7), any parent~~  
12           ~~under 18 years of age who appears before the court shall be represented by counsel~~  
13           ~~but no such parent may waive counsel.~~

14           ~~(b) If a petition under s. 938.13 (4), (6), (6m), or (7) is contested, no juvenile may~~  
15           ~~be placed outside his or her home unless the nonpetitioning parent is represented by~~  
16           ~~counsel at the fact-finding hearing and subsequent proceedings. If the petition is~~  
17           ~~not contested, the juvenile may not be placed outside his or her home unless the~~  
18           ~~nonpetitioning parent is represented by counsel at the hearing at which the~~  
19           ~~placement is made. The parent may waive counsel if the court is satisfied that the~~  
20           ~~wavier is knowingly and voluntarily made and the court may place the juvenile~~  
21           ~~outside the home even though the parent was not represented by counsel.~~

NOTE: The creation of s. 938.23 (2) conforms ch. 938 to the law that existed prior  
to the action of the legislature that was ruled unconstitutional in *Joni B.*

22           **SECTION 240.** 938.23 (2g) of the statutes is created to read:

**938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.**

Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from his or her home or the placement of the Indian juvenile in an out-of-home care placement, the Indian juvenile's parent or Indian custodian, upon a determination of indigency as provided in sub. (4), shall have the right to be represented by court-appointed counsel. If the court appoints counsel under this subsection for a person who is not otherwise entitled to representation under sub. (2), the court shall promptly notify the U.S. secretary of the interior of the appointment and certify to the secretary the reasonable fees and expenses of the court-appointed counsel for purposes of payment of those fees and expenses under 25 USC 1912 (b).

**SECTION 241.** 938.23 (3) of the statutes, as affected by 2005 Wisconsin Act 344,

is amended to read:

**938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL.** Except as provided in this subsection, at At any time, upon request or on its own motion, the court may appoint counsel for the juvenile or any party, unless the juvenile or the party has or wishes to retain counsel of his or her own choosing. ~~The court may not appoint counsel for any party other than the juvenile in a proceeding under s. 938.13.~~

**SECTION 242.** 938.23 (4) of the statutes, as affected by 2005 Wisconsin Act 344,

is amended to read:

**938.23 (4) PROVIDING COUNSEL.** If a juvenile has a right to be represented by counsel or is provided counsel at the discretion of the court under this section and counsel is not knowingly and voluntarily waived, the court shall refer the juvenile to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. In any situation

①

under sub. ~~(2g)~~ (2g) in which a parent 18 years of age or over is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent is unable to afford counsel in full, or the parent so indicates; the court shall refer the parent to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the juvenile who is named as the respondent in that petition.

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**SECTION 243.** 938.235 (4) (a) 7. of the statutes is amended to read:

938.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights under s. 48.46 ~~of 48.47~~.

⑭

**SECTION 244.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly committed a delinquent act and that all of the following circumstances apply, the intake worker shall promptly notify the clerk of the tribal court under subd. 1., a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under those circumstances:

**SECTION 245.** 938.24 (2r) (a) 1. of the statutes is amended to read:

938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,

1 physical placement or visitation with the juvenile's parent, or permanent  
2 guardianship.

3 **SECTION 246.** 938.24 (2r) (a) 2. of the statutes is amended to read:

4 938.24 (2r) (a) 2. At the time of the delinquent act the juvenile was physically  
5 outside the boundaries of that tribe's the reservation of the Indian tribe of the tribal  
6 court and any off-reservation trust land of either that Indian tribe or a member of  
7 that Indian tribe as a direct consequence of a tribal court order under subd. 1.,  
8 including a tribal court order placing the juvenile in the home of a relative of the  
9 juvenile who on or after the date of the tribal court order resides physically outside  
10 the boundaries of a reservation and off-reservation trust land.

11 **SECTION 247.** 938.24 (2r) (b) of the statutes is amended to read:

12 938.24 (2r) (b) If the intake worker is notified by an official of the Indian tribe  
13 that a petition relating to the delinquent act has been or may be filed in tribal court,  
14 the intake worker shall consult with tribal officials, unless the intake worker  
15 determines under sub. (4) that the case should be closed. After the consultation, the  
16 intake worker shall determine whether the best interests of the juvenile and of the  
17 public would be served by having the matter proceed solely in tribal court. If the  
18 intake worker determines that the best interests of the juvenile and of the public  
19 would be served by having the matter proceed solely in tribal court, the intake  
20 worker shall close the case. If the intake worker determines that the best interests  
21 of the juvenile and of the public would not be served by having the matter proceed  
22 solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

23 ~~SECTION 248. 938.243 (1) (e) of the statutes is amended to read:~~  
24 ~~938.243 (1) (e) The right of the juvenile to counsel under s. 938.23.~~

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1           **SECTION 249.** 938.243 (3) of the statutes, ~~as affected by 2005 Wisconsin Act 344,~~

2 is amended to read:

3           **938.243 (3)** INFORMATION WHEN JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT  
4 HAD CUSTODY HEARING. If the juvenile has not had a hearing under s. 938.21 and was  
5 not present at an intake conference under s. 938.24, the intake worker shall notify  
6 the juvenile, parent, guardian, ~~and~~ legal custodian, and Indian custodian as  
7 appropriate of their basic rights under this section. The notice shall be given  
8 verbally, either in person or by telephone, and in writing. The notice shall be given  
9 in sufficient time to allow the juvenile, parent, guardian, ~~or~~ legal custodian, or Indian  
10 custodian to prepare for the plea hearing. This subsection does not apply to cases of  
11 deferred prosecution under s. 938.245.

12           **SECTION 250.** 938.255 (1) (cm) of the statutes, ~~as affected by 2005 Wisconsin~~

13 ~~Act 344,~~ is amended to read:

14           **938.255 (1)** (cm) If the petition is initiating proceedings ~~other than proceedings~~  
15 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether  
16 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to  
17 1963, and, if the juvenile may be subject to that act, the names and addresses of the  
18 juvenile's Indian custodian, if any, and Indian tribe, if known.

19           **SECTION 251.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

20           **938.255 (1)** (cr) 1. a. The juvenile is an American Indian juvenile.

21           **SECTION 252.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

22           **938.255 (1)** (cr) 1. b. At the time of the alleged delinquent act, the juvenile was  
23 under an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to  
24 adoption, physical placement or visitation with the juvenile's parent, or permanent  
25 guardianship.

1           **SECTION 253.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

2           938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was  
3 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe  
4 of the tribal court and any off-reservation trust land of either that Indian tribe or a  
5 member of that Indian tribe as a direct consequence of a tribal court order under  
6 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative  
7 of the juvenile who on or after the date of the tribal court order resides physically  
8 outside the boundaries of a reservation and off-reservation trust land.

9           **SECTION 254.** 938.255 (1) (cr) 2. of the statutes is amended to read:

10           938.255 (1) (cr) 2. If the statement under subd. 1. is included in the petition and  
11 if the intake worker, district attorney, or corporation counsel has been notified by an  
12 official of the Indian tribe that a petition relating to the delinquent act has been or  
13 may be filed in tribal court with respect to the alleged delinquent act, a statement  
14 to that effect.

under s. 938.028 (4) (d) 1.

under s. 938.028 (4) (d) 2.

15           **SECTION 255.** 938.255 (1) (g) of the statutes is created to read:

16           938.255 (1) (g) If the juvenile is or may be an Indian juvenile and is alleged to  
17 come within the provisions of s. 938.13 (4), (6), (6m), or (7), reliable and credible  
18 information showing that continued custody of the juvenile by the juvenile's parent  
19 or Indian custodian is likely to result in serious emotional or physical damage to the  
20 juvenile and reliable and credible information showing that the person who took the  
21 juvenile into custody and the intake worker have made active efforts to prevent the  
22 breakup of the Indian family and that those efforts have proved unsuccessful.

23           **SECTION 256.** 938.255 (2) of the statutes is amended to read:

24           938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~ (f), and (g) are not known  
25 or cannot be ascertained by the petitioner, the petition shall so state.

1 SECTION 257. 938.255 (4) of the statutes ~~as affected by 2005 Wisconsin Act 344~~

2 is amended to read:

3 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall  
4 be given to the juvenile and to the parents, guardian, legal custodian and physical  
5 custodian. If the juvenile is an Indian juvenile who is alleged to come within the  
6 provisions of s. 938.13 (4), (6), (6m), or (7), a copy of the petition shall also be given  
7 to the Indian juvenile's Indian custodian and tribe.

8 SECTION 258. 938.27 (3) (a) 1. of the statutes ~~as affected by 2005 Wisconsin Act~~  
9 ~~344~~ is amended to read:

10 938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any  
11 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment  
12 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and  
13 any person specified in par. (b) or (d), if applicable, of all hearings involving the  
14 juvenile under this subchapter, except hearings on motions for which notice must be  
15 provided only to the juvenile and his or her counsel. If parents entitled to notice have  
16 the same place of residence, notice to one constitutes notice to the other. The first  
17 notice to any interested party, foster parent, treatment foster parent, or other  
18 physical custodian described in s. 48.62 (2) shall be in writing and may have a copy  
19 of the petition attached to it. Notices of subsequent hearings may be given by  
20 telephone at least 72 hours before the time of the hearing. The person giving  
21 telephone notice shall place in the case file a signed statement of the <sup>date and</sup> time notice was  
22 given and the person to whom he or she spoke.

23 SECTION 259. 938.27 (3) (d) of the statutes is created to read:

24 938.27 (3) (d) If the petition that was filed relates to facts concerning a situation  
25 under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile, the court shall notify,

1 under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian  
2 custodian or tribe may intervene at any point in the proceeding.

3 **SECTION 260.** 938.27 (4) (b) of the statutes is amended to read:

4 938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or  
5 her right to legal counsel regardless of ability to pay.

6 **SECTION 261.** 938.273 (1) (a) of the statutes, ~~as affected by 2005 Wisconsin Act~~

7 ~~644~~ of the statutes is amended to read:

8 938.273 (1) (a) Service of summons or notice required by s. 938.27 may be made  
9 by mailing a copy of the summons and notice to the ~~persons~~ person summoned or  
10 notified. If

11 (ar) Except as provided in par. (b), if the ~~persons~~ person, other than a person  
12 specified in s. 938.27 (4m), ~~fail~~ fails to appear at the hearing or otherwise to  
13 acknowledge service, a continuance shall be granted, ~~except as provided in par. (b),~~  
14 and service shall be made personally by delivering to the ~~persons~~ person a copy of the  
15 summons or notice; except that if the court determines that it is impracticable to  
16 serve the summons or notice personally, ~~it~~ the court may order service by certified  
17 mail addressed to the last-known ~~addresses~~ address of the ~~persons~~ person.

18 **SECTION 262.** 938.273 (1) (ag) of the statutes is created to read:

19 938.273 (1) (ag) In a proceeding under s. 938.13 (4), (6), (6m), or (7), service of  
20 summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian  
21 custodian, or tribe shall be made ~~by mailing by registered mail, return receipt~~  
22 requested, a copy of the summons or notice, together with notice of the person's right  
23 to intervene in the proceeding, to the person summoned or notified or, if the identity  
24 or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be  
25 determined, to the U.S. secretary of the interior. As provided in 25 USC 1912 (a) the

as provided in s. 938.028 (4)(a)

1 ~~U.S. secretary of interior shall have 15 days after receipt of the summons or notice~~  
2 ~~to provide the requisite notice to the Indian juvenile's parent, Indian custodian, and~~  
3 ~~tribe.~~

4 SECTION 263. 938.273 (1) (b) of the statutes, as affected by 2005 Wisconsin Act

5 ~~344~~ is amended to read:

6 938.273 (1) (b) The court may refuse to grant a continuance when the juvenile  
7 is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that  
8 service of notice of the next hearing be made personally or by certified mail to the  
9 last-known address of the person who failed to appear at the hearing.

10 SECTION 264. 938.273 (1) (c) (intro.) of the statutes, as affected by 2005

11 ~~Wisconsin Act 344~~, is renumbered 938.273 (1) (c) (intro.) and amended to read:

12 938.273 (1) (c) (intro.) Personal service shall be made at least 72 hours before  
13 the hearing. Mail shall be sent at least 7 days before the hearing, except that when  
14 as follows:

15 1. When the petition is filed under s. 938.13 and the person to be notified lives  
16 outside the state, the mail shall be sent at least 14 days before the hearing.

17 SECTION 265. 938.273 (1) (c) 2. of the statutes is created to read:

18 938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves  
19 an Indian juvenile and the person to be notified is the Indian juvenile's parent,  
20 Indian custodian, or tribe, the mail shall be sent so that it is received by the person  
21 to be notified, or by the U.S. secretary of interior, at least 10 days before the time of  
22 the hearing.

23 SECTION 266. 938.299 (6) (d) of the statutes is amended to read:

24 938.299 (6) (d) The court may stay the proceedings under this chapter pending  
25 the outcome of the paternity proceedings under ~~ss. 767.45 to 767.60~~ if the court

subch. IX of ch. 767

1 determines that the paternity proceedings will not unduly delay the proceedings  
 2 under this chapter and the determination of paternity is necessary to the court's  
 3 disposition of the juvenile if the juvenile is found to be in need of protection or services  
 4 or if the court determines that the paternity proceedings may result in a finding that  
 5 the juvenile is an Indian juvenile and in a petition by the juvenile's parent, Indian  
 6 custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

7 **SECTION 267.** 938.299 (9) (a) of the statutes ~~as affected by 2005 Wisconsin Act~~

8 **344** is amended to read:

9 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the  
 10 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under  
 11 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed  
 12 in a tribe's tribal court with respect to a juvenile to whom the circumstances specified  
 13 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate  
 14 with the tribal court in which the other proceeding is or may be pending to discuss  
 15 which court ~~may be~~ <sup>is</sup> the more appropriate forum. 938.278 (4) (a)

16 **SECTION 268.** 938.299 (10) of the statutes is created to read:

17 938.299 (10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)  
 18 the court determines that the juvenile is or may be an Indian juvenile, the court shall  
 19 provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe  
 20 in the manner specified in s. ~~938.273 (1) (a)~~. The next hearing in the proceeding may  
 21 not be held until at least 10 days after receipt of the notice by the parent, Indian  
 22 custodian, and tribe. On request of the parent, Indian custodian, or tribe, the court  
 23 shall grant a continuance of up to 20 additional days to enable the requester to  
 24 prepare for that hearing.

1           **SECTION 269.** 938.30 (1) of the statutes ~~as affected by 2005 Wisconsin Act 344,~~

2 is amended to read:

3           938.30 (1) TIME OF HEARING. Except as provided in this subsection and s.  
4 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition  
5 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party  
6 wishes to contest an allegation that the juvenile is in need of protection or services  
7 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows  
8 reasonable time for the parties to prepare but is within 30 days after the filing of a  
9 petition or issuance of a citation for a juvenile who is not being held in secure custody  
10 or within 10 days after the filing of a petition or issuance of a citation for a juvenile  
11 who is being held in secure custody. In a municipal court operated jointly by 2 or more  
12 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's  
13 plea shall take place within 45 days after the filing of a petition or issuance of a  
14 citation for a juvenile who is not being held in secure custody.

15           **SECTION 270.** 938.30 (2) of the statutes ~~as affected by 2005 Wisconsin Act 344,~~

16 is amended to read:

17           938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.  
18 At or before the commencement of the hearing under this section the juvenile and  
19 the parent, guardian, ~~or~~ legal custodian, or Indian custodian shall be advised of their  
20 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the  
21 court and that a request for a substitution of judge under s. 938.29 must be made  
22 before the end of the plea hearing or is waived. Nonpetitioning parties, including the  
23 juvenile, shall be granted a continuance of the plea hearing if they wish to consult  
24 with an attorney on the request for a substitution of a judge.

25           **SECTION 271.** 938.30 (6) (a) of the statutes is amended to read:

1           938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),  
2 shall set a date for the dispositional hearing which allows reasonable time for the  
3 parties to prepare but is no more than 10 days from the plea hearing for a juvenile  
4 who is held in secure custody and no more than 30 days from the plea hearing for a  
5 juvenile who is not held in secure custody. If all parties consent the court may  
6 proceed immediately with the dispositional hearing. If a citation is not contested, the  
7 court may proceed immediately to enter a dispositional order.

8           **SECTION 272.** 938.30 (7) of the statutes ~~as affected by 2005 Wisconsin Act 344~~  
9 is amended to read:

10           **938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.**  
11 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set  
12 a date for the fact-finding hearing <sup>so that</sup> ~~which~~ allows a reasonable time for the parties to  
13 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who  
14 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for  
15 a juvenile who is not held in secure custody.

16           **SECTION 273.** 938.305 of the statutes is amended to read:

17           **938.305 Hearing upon the involuntary removal of a juvenile.**

18 Notwithstanding other time periods for hearings under this chapter, if a juvenile is  
19 removed from the physical custody of the juvenile's parent or guardian under s.  
20 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject  
21 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30  
22 days after a request from the parent or guardian from whom custody was removed.  
23 The plea hearing and fact-finding hearing may be combined. This time period may  
24 be extended only with the consent of the requesting parent or guardian.

1) SECTION 274. 938.31 (7) (a) of the statutes, ~~as affected by 2005 Wisconsin Act~~  
2) ~~344~~ is amended to read:

3 938.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.  
4 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable  
5 time for the parties to prepare but is no more than 10 days after the fact-finding  
6 hearing for a juvenile in secure custody and no more than 30 days after the  
7 fact-finding hearing for a juvenile not held in secure custody. If all parties consent,  
8 the court may immediately proceed with a dispositional hearing.

9 SECTION 275. 938.315 (1) (a) 11. of the statutes is created to read:

10 938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request  
11 of the parent, Indian custodian, or tribe of a juvenile who is or may be an Indian  
12 juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6),  
13 (6m), or (7) involving the juvenile.

14) SECTION 276. 938.315 (2) of the statutes, ~~as affected by 2005 Wisconsin Act 344~~  
15 is amended to read:

16 938.315 (2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by  
17 the court only upon a showing of good cause in open court or during a telephone  
18 conference under s. 807.13 on the record and only for so long as is necessary, taking  
19 into account the request or consent of the representative of the public under s. 938.09  
20 or the parties, the request of a person specified in sub. (1) (a) 11., the interests of the  
21 victims, and the interest of the public in the prompt disposition of cases.

22) SECTION 277. 938.32 (1) (d) 1. of the statutes, ~~as affected by 2005 Wisconsin Act~~  
23) ~~244~~ is renumbered 938.32 (1) (d) and amended to read:

24 938.32 (1) (d) If the court finds that any of the circumstances specified in s.  
25 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing

1 under s. 938.38 (4m) within 30 days after the date of that finding to determine the  
2 permanency plan for the juvenile. The agency responsible for preparing the  
3 permanency plan shall file the permanency plan with the court not less than 5 days  
4 before the date of the hearing.

5 SECTION 278. 938.32 (1) (d) 2. of the statutes ~~as affected by 2005 Wisconsin Act~~  
6 ~~344~~ is repealed.

7 SECTION 279. 938.32 (1) (d) 3. of the statutes ~~as affected by 2005 Wisconsin Act~~  
8 ~~344~~ is repealed. *under s. 938.028 (4)(d) 3.*

9 SECTION 280. 938.33 (4) (d) of the statutes is created to read:  
10 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),  
11 if the agency knows or has reason to know that the juvenile is an Indian juvenile, a  
12 description of any efforts undertaken to determine whether the juvenile is an Indian  
13 juvenile, <sup>(j)</sup> specific information showing that continued custody of the juvenile by the  
14 parent or Indian custodian is likely to result in serious emotional or physical damage  
15 to the juvenile, ~~and~~ specific information showing that the county department or  
16 agency primarily responsible for providing services to the juvenile has made active  
17 ~~efforts~~ *under s. 938.028 (4)(a) 2.* to prevent the breakup of the Indian family and that those efforts have proved  
18 unsuccessful.

19 SECTION 281. 938.335 (3j) of the statutes is created to read:  
20 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this  
21 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13  
22 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending  
23 placement of the Indian juvenile in a foster home, treatment foster home, group  
24 home, or residential care center for children and youth or in the home of a relative

*if a statement as to whether the out-of-home care placement recommended is in compliance with the order of placement preference under s. 938.028 (6) (a) and, if the recommended placement is not in compliance with that order, specific information showing good cause for departing from that order*

¶ (c) that the placement recommended is in compliance with the order of placement preference under s. 938.028 (6)(a) or, if that placement is not in compliance with that order, good cause for departing from that order.

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1 other than a parent, the agency shall present as evidence specific information  
2 showing all of the following:

3 (a) That continued custody of the Indian juvenile by the parent or Indian  
4 custodian is likely to result in serious emotional or physical damage to the Indian  
5 juvenile. under s. 938.028 (4)(2)1. under s. 938.028 (4)(2)2.

6 (b) That the county department or agency primarily responsible for providing  
7 services to the Indian juvenile has made active efforts to prevent the breakup of the  
8 Indian family and that those efforts have proved unsuccessful.

9 SECTION 282. 938.345 (1m) of the statutes is created to read:

(b)(b) to (d)

10 938/345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to para. (b)

s. 938.028 (5)(b) to (d)

11 to (d), if the juvenile is an Indian juvenile who is in need of protection or services  
12 under s. 938.13 (4), (6), (6m), or (7) and who is being placed in an out-of-home care  
13 placement, the court shall designate one of the following as the placement for the

14 Indian juvenile, in the order of preference listed (c)

placements specified in s. 938.028 (6)(a) 1. to 4.

- 15 1. The home of an extended family member of the Indian juvenile.
- 16 2. A foster home or treatment foster home licensed, approved or specified by
- 17 the Indian juvenile's tribe.
- 18 3. An Indian foster home or treatment foster home licensed or approved by the
- 19 department, a county department, or a child welfare agency.
- 20 4. A group home or residential care center for children and youth approved by
- 21 an Indian tribe or operated by an Indian organization that has a program suitable
- 22 to meet the needs of the Indian juvenile.
- 23 (b) If the Indian juvenile's tribe has established, by resolution, an order of
- 24 preference that is different from the order specified in par. (a), the court shall follow

1 the order of preference established by that tribe so long as the placement is the least  
2 restrictive setting appropriate for the juvenile's needs as specified in par. (e).

3 (c) The court may depart from the order of preference specified in par. (a) or (b)  
4 for good cause shown.

5 (d) The standards to be applied in meeting the placement preference  
6 requirement of this subsection shall be the prevailing social and cultural standards  
7 of the Indian community in which the Indian juvenile's parents or extended family  
8 members reside or with which the Indian juvenile's parents or extended family  
9 members maintain social and cultural ties.

10 (e) In designating a placement under this subsection, the court shall designate  
11 a placement that is the least restrictive setting that most approximates a family, that  
12 meets the Indian juvenile's special needs, if any, and that is within reasonable  
13 proximity to the Indian juvenile's home, taking into account those special needs.

14 **SECTION 283.** 938.355 (2) (b) 6v. of the statutes is created to read:

15 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of  
16 protection or services under s. 983.13 (4), (6), (6m), or (7) and who is placed outside  
17 the home, a finding supported by clear and convincing evidence, including the  
18 testimony of one or more qualified expert witnesses, that continued custody of the  
19 Indian juvenile by the parent or Indian custodian is likely to result in serious  
20 emotional or physical damage to the juvenile and a finding supported by clear and  
21 convincing evidence as to whether the county department or agency primarily  
22 responsible for providing services under a court order has made active efforts to  
23 prevent the breakup of the Indian family and that those efforts have proved  
24 unsuccessful.

25 **SECTION 284.** 938.355 (2) (d) of the statutes is amended to read:

1 938.355 (2) (d) The court shall provide a copy of the dispositional order to the  
2 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an  
3 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),  
4 or (7), to the Indian juvenile's Indian custodian and tribe.

5 SECTION 285. 938.355 (2c) (title) of the statutes is amended to read:

6 938.355 (2c) (title) REASONABLE EFFORTS AND ACTIVE EFFORTS STANDARDS.

7 SECTION 286. 938.355 (2c) (c) of the statutes is created to read:

8 938.355 (2c) (c) When a court makes a finding under sub. (2) (b) 6v. as to  
9 whether the county department or the agency primarily responsible for providing  
10 services to an Indian juvenile under a court order has made active efforts to prevent  
11 the breakup of the Indian family, the court's consideration of active efforts shall  
12 include the considerations listed under par. (a) 1. to 5., whether visitation schedules  
13 between the Indian juvenile and his or her parents were implemented, unless  
14 visitation was denied or limited by the court, whether the order of preference for  
15 placement of the Indian juvenile under s. ~~938.345 (1m)~~ was followed, and whether  
16 the services provided to the Indian juvenile and his or her family were culturally  
17 responsive to their needs.

under s. 938.028 (4)  
(d) 2.

938.028 (6)(a)

18 SECTION 287. 938.355 (2d) (c) 1. of the statutes ~~as affected by 2005 Wisconsin~~

19 ~~Act 344~~ is renumbered 938.355 (2d) (c) and amended to read:

20 938.355 (2d) (c) If the court finds that any of the circumstances under par. (b)  
21 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38  
22 (4m) within 30 days after the date of that finding to determine the permanency plan  
23 for the juvenile. ~~If a hearing is held under this subdivision, the agency responsible~~  
24 ~~for preparing the permanency plan shall file the permanency plan with the court not~~  
25 ~~less than 5 days before the date of the hearing.~~

1 SECTION 288. 938.355 (2d) (c) 2. of the statutes is repealed.

2 SECTION 289. 938.355 (2d) (c) 3. of the statutes is repealed.

3 SECTION 290. 938.355 (6) (an) 1. of the statutes as affected by 2005 Wisconsin  
4 Act 344 is amended to read:

5 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other  
6 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a  
7 dispositional order imposed by the municipal court, the municipal court may petition  
8 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose  
9 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with  
10 monitoring by an electronic monitoring system. A sanction may be imposed under  
11 this subdivision only if, at the time of the judgment, the municipal court explained  
12 the conditions to the juvenile and informed the juvenile of those possible sanctions  
13 for a violation or if before the violation the juvenile has acknowledged in writing that  
14 he or she has read, or has had read to him or her, those conditions and possible  
15 sanctions and that he or she understands those conditions and possible sanctions.  
16 The petition shall contain a statement of whether the juvenile may be subject to the  
17 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the juvenile may be  
18 subject to that act, the names and addresses of the juvenile's Indian custodian, if any,  
19 and tribe, if known.

20 SECTION 291. 938.355 (6) (b) of the statutes as affected by 2005 Wisconsin Act  
21 344 is amended to read:

22 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction  
23 may be brought by the person or agency primarily responsible for the provision of  
24 dispositional services, the district attorney or corporation counsel, or the court that  
25 entered the dispositional order. If the court initiates the motion, that court is

938.029 (4)(a)

1 disqualified from holding a hearing on the motion. Notice of the motion shall be given  
2 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all  
3 parties present at the original dispositional hearing. The motion shall contain a  
4 statement of whether the juvenile may be subject to the federal Indian Child Welfare  
5 Act, 25 USC 1911 to 1963 and, if the juvenile may be subject to that act, the names  
6 and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

7 **SECTION 292.** 938.355 (6) (bm) of the statutes is created to read:

8 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion  
9 knows or has reason to know that the juvenile is an Indian juvenile who has been  
10 found to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7) or who  
11 has been adjudged to have violated a civil law or ordinance, notice under par. (b) to  
12 the Indian juvenile's parent shall be provided in the manner specified in s. ~~938.273~~

13 ~~(1)(a)~~. In like manner, the court shall also notify the Indian juvenile's Indian  
14 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after  
15 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On  
16 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall  
17 grant a continuance of up to 20 additional days to enable the requester to prepare  
18 for the hearing.

19 **SECTION 293.** 938.355 (6) (cr) of the statutes is created to read:

20 938.355 (6) (cr) *Indian juvenile; findings.* The court may not order the sanction  
21 of placement in a place of nonsecure custody specified in par. (d) 1. for an Indian  
22 juvenile who has been found to be in need of protection or services under s. 983.13  
23 (4), (6), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance  
24 unless the court finds by clear and convincing evidence, including the testimony of  
25 one or more qualified expert witnesses, that continued custody of the Indian juvenile

*(d)*  
Under s. 938.028 (4)(2)1.

Under s. 938.028 (4)  
(d) 2.

1 by the parent or Indian custodian is likely to result in serious emotional or physical  
2 damage to the juvenile, and that the agency primarily responsible for providing  
3 services for the Indian juvenile has made active efforts to prevent the breakup of the  
4 Indian family and that those efforts have proved unsuccessful.

5 **SECTION 294.** 938.355 (6m) (am) 1. of the statutes ~~as affected by 2005~~  
6 ~~Wisconsin Act 344~~ is amended to read:

7 938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance  
8 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by  
9 the municipal court, the municipal court may petition the court assigned to exercise  
10 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction  
11 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at  
12 the time of the judgment the municipal court explained the conditions to the juvenile  
13 and informed the juvenile of that possible sanction or if before the violation the  
14 juvenile has acknowledged in writing that he or she has read, or has had read to him  
15 or her, those conditions and that possible sanction and that he or she understands  
16 those conditions and that possible sanction. The petition shall contain a statement  
17 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25  
18 USC 1911 to 1963, and, if the juvenile may be subject to that act, the names and  
19 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

20 **SECTION 295.** 938.355 (6m) (bm) of the statutes is created to read:

21 938.355 (6m) (bm) *Indian juvenile; notice.* If the person initiating the motion  
22 knows or has reason to know that the juvenile is an Indian juvenile, notice under par.  
23 (b) to the Indian juvenile's parent shall be provided in the manner specified in s.

24 ~~938.273 (1) (ag)~~ In like manner, the court shall also notify the Indian juvenile's  
25 Indian custodian and tribe. No hearing may be held under par. (c) until at least 10

938.028 (4)(a)

1 days after receipt of the notice by the Indian juvenile’s parent, Indian custodian, and  
2 tribe. On request of the Indian juvenile’s parent, Indian custodian, or tribe, the court  
3 shall grant a continuance of up to 20 additional days to enable the requester to  
4 prepare for the hearing.

5) SECTION 296. 938.355 (6m) (c) of the statutes ~~as affected by 2005 Wisconsin~~

6) ~~Act 344~~ is amended to read:

7 938.355 (6m) (c) *Sanction hearing.* Before imposing a sanction under par. (a)  
8 or (ag), the court shall hold a hearing at which the juvenile is entitled to be  
9 represented by legal counsel and to present evidence. The Except as provided in par.  
10 (bm), the hearing shall be held within 15 days after the filing of a motion under par.

11 (b). Under s. 938.029 (4)(d) 1, Under s. 938.029 (4)(d) 2,

12 SECTION 297. 938.355 (6m) (cr) of the statutes is created to read:

13 938.355 (6m) (cr) *Indian juvenile, findings.* The court may not order the  
14 sanction of placement in a place of nonsecure custody specified in par. (a) 1g. for an  
15 Indian juvenile unless the court finds by clear and convincing evidence, including the  
16 testimony of one or more qualified expert witnesses, that continued custody of the  
17 Indian juvenile by the parent or Indian custodian is likely to result in serious  
18 emotional or physical damage to the juvenile, and that the agency primarily  
19 responsible for providing services for the Indian juvenile has made active efforts to  
20 prevent the breakup of the Indian family and that those efforts have proved  
21 unsuccessful.

22 SECTION 298. 938.357 (1) (am) 1g. of the statutes is created to read:

23 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who is in need of  
24 protection or services under s. 938.13 (4), (6), (6m), or (7), a notice under subd. 1. shall  
25 also contain specific information showing that continued custody of the Indian

938.028 (4)(d) 1.  
Under s. 938.028 (4)(d) 1.

Under s. 938.028  
(4)(d) 2.

1 juvenile by the parent or Indian custodian is likely to result in serious emotional or  
2 physical damage to the juvenile, specific information showing that the agency  
3 primarily responsible for implementing the dispositional order has made active  
4 efforts to prevent the breakup of the Indian family and that those efforts have proved  
5 unsuccessful, a statement as to whether the new placement is in compliance with the  
6 order of placement preference under s. ~~938.345 (1m)~~ and, if the new placement is not  
7 in compliance with that order, specific information showing good cause for departing  
8 from that order.

938.029 (4)(a)

938.028 (6)(a)

SECTION 299. 938.357 (1) (am) 1m. of the statutes is created to read:

10 938.357 (1) (am) 1m. In a proceeding involving an Indian juvenile who is in  
11 need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd.  
12 1. to the Indian juvenile's parent shall be provided in the manner specified in s.  
13 ~~938.273 (1)(a)~~. In like manner, the court shall also provide notice of the hearing,  
14 together with a copy of the request for the change in placement, to the Indian  
15 juvenile's Indian custodian and tribe. No hearing on the request may be held until  
16 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian  
17 custodian, and tribe. On request of the Indian juvenile's parent, Indian custodian,  
18 or tribe, the court shall grant a continuance of up to 20 additional days to enable the  
19 requester to prepare for the hearing.

SECTION 300. 938.357 (1) (am) 2. of the statutes is amended to read:

20 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of  
21 a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain  
22 a hearing on the matter by filing an objection with the court within 10 days after  
23 receipt of the notice. Placements may not be changed until 10 days after that notice  
24 is sent to the court unless the parent, guardian, ~~or~~ legal custodian, or Indian  
25

1 custodian and the juvenile, if 12 or more years of age, sign written waivers of  
2 objection, except that changes in placement that were authorized in the dispositional  
3 order may be made immediately if notice is given as required under subd. 1. In  
4 addition, a hearing is not required for placement changes authorized in the  
5 dispositional order except when an objection filed by a person who received notice  
6 alleges that new information is available that affects the advisability of the court's  
7 dispositional order.

8) **SECTION 301.** 938.357 (1) (am) 3. of the statutes as affected by 2005 Wisconsin  
9 Act 344 is amended to read: 938.028 (6)(a)

10 938.357 (1) (am) 3. If the court changes the juvenile's placement from a  
11 placement outside the home to another placement outside the home, the change in  
12 placement order shall contain one of the statements under sub. (2v) (a) 2. If the court  
13 changes the placement of an Indian juvenile who is in need of protection or services  
14 under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home to another  
15 placement outside the home, the change in placement order shall, in addition,  
16 comply with the order of placement preference under s. ~~938.345 (1m)~~ and contain the  
17 findings under sub. (2v) (a) 4. under s. 938.028 (4)(d)1.

18 **SECTION 302.** 938.357 (1) (c) 1m. of the statutes is created to read:

19 938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of  
20 protection or services under s. 938.13 (4), (6), (6m), or (7), a request under subd. 1.  
21 shall also contain specific information showing that continued custody of the Indian  
22 juvenile by the parent or Indian custodian is likely to result in serious emotional or  
23 physical damage to the juvenile, specific information showing that the agency  
24 primarily responsible for implementing the dispositional order has made active  
25 efforts to prevent the breakup of the Indian family and that those efforts have proved

(4)(d)2.  
under s. 938.028 (4)(d)2.

938.029 (6)(a)

1 unsuccessful, a statement as to whether the new placement is in compliance with the  
2 order of placement preference under s. ~~938.345 (1m)~~ and, if the new placement is not  
3 in compliance with that order, specific information showing good cause for departing  
4 from that order.

938.029 (4)(a)

SECTION 303. 938.357 (1) (c) 2m. of the statutes is created to read:

938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need  
of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd. 2. to  
the Indian juvenile's parent shall be provided in the manner specified in s. ~~938.273~~

~~(1) (a)~~. In like manner, the court shall also provide notice of the hearing, together  
with a copy of the request for the change in placement, to the Indian juvenile's Indian  
custodian and tribe. No hearing on the request may be held until at least 10 days  
after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe.  
On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall  
grant a continuance of up to 20 additional days to enable the requester to prepare  
for the hearing.

SECTION 304. 938.357 (1) (c) 3. of the statutes ~~as affected by 2005 Wisconsin~~

~~Act 344~~ is amended to read:

938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement  
in the juvenile's home to a placement outside the juvenile's home, the change in  
placement order shall contain the findings under sub. (2v) (a) 1., one of the  
statements under sub. (2v) (a) 2., and, if in addition the court finds that any of the  
circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the  
determination under sub. (2v) (a) 3. If the court changes the placement of an Indian  
juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7)  
from a placement in the juvenile's home to a placement outside the juvenile's home.

938.028(6)(a)  
938.029 (6)(a)

1 the change in placement order shall, in addition, comply with the order of placement  
2 preference under s. ~~938.345 (1m)~~ and contain the findings under sub. (2v) (a) 4.

3 SECTION 305. 938.357 (2m) (a) of the statutes as affected by 2005 Wisconsin  
4 Act 344 is amended to read:

5 938.357 (2m) (a) *Request; information required.* The juvenile, the parent,  
6 guardian, or legal custodian of the juvenile, or any person or agency primarily bound  
7 by the dispositional order, other than the person or agency responsible for  
8 implementing the order, or, if the juvenile is an Indian juvenile who is in need of  
9 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian  
10 custodian may request a change in placement under this paragraph. The request  
11 shall contain the name and address of the new placement requested and shall state  
12 what new information is available that affects the advisability of the current  
13 placement. If the proposed change in placement would change the placement of a  
14 juvenile placed in the juvenile's home to a placement outside the home, the request  
15 shall also contain specific information showing that continued placement of the  
16 juvenile in the juvenile's home would be contrary to the welfare of the juvenile and,  
17 unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific  
18 information showing that the agency primarily responsible for implementing the  
19 dispositional order has made reasonable efforts to prevent the removal of the  
20 juvenile from the home, while assuring that the juvenile's health and safety are the  
21 paramount concerns. The request shall be submitted to the court. The court may  
22 also propose a change in placement on its own motion.

23 SECTION 306. 938.357 (2m) (am) of the statutes is created to read:

24 938.357 (2m) (am) *Indian juvenile; information required.* If the proposed  
25 change of placement would change the placement of an Indian juvenile placed in the

Under s. 938.028  
(4)(a)1.

Under s. 938.028 (4)(a)2.

1 juvenile's home under s. 938.357 (4), (6), (6m), or (7) to a placement outside the  
 2 juvenile's home, a request under par. (a) shall also contain specific information  
 3 showing that continued custody of the Indian juvenile by the parent or Indian  
 4 custodian is likely to result in serious emotional or physical damage to the juvenile,  
 5 specific information showing that the agency primarily responsible for  
 6 implementing the dispositional order has made active efforts to prevent the breakup  
 7 of the Indian family and that those efforts have proved unsuccessful, a statement as  
 8 to whether the new placement is in compliance with the order of placement  
 9 preference under s. ~~938.345 (1m)~~ <sup>938.028 (b)(a)</sup> and, if the new placement is not in compliance with  
 10 that order, specific information showing good cause for departing from that order.

11 SECTION 307. 938.357 (2m) (b) of the statutes, as affected by 2005 Wisconsin

12 ~~Act 344~~ is amended to read:

13 938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior  
 14 to ordering any change in placement requested or proposed under par. (a) if the  
 15 request states that new information is available that affects the advisability of the  
 16 current placement. A hearing is not required if the requested or proposed change in  
 17 placement does not involve a change in placement of a juvenile placed in the  
 18 juvenile's home to a placement outside the juvenile's home, written waivers of  
 19 objection to the proposed change in placement are signed by all parties entitled to  
 20 receive notice under sub. (1) (am) 1., and the court approves. If a hearing is  
 21 scheduled, not less than 3 days before the hearing the court shall notify the juvenile,  
 22 the parent, guardian, and legal custodian of the juvenile, any foster parent,  
 23 treatment foster parent, or other physical custodian described in s. 48.62 (2) of the  
 24 juvenile, and all parties who are bound by the dispositional order at least 3 days prior  
 25 to the hearing, and, if the juvenile is an Indian juvenile who is in need of protection

1 or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian  
2 and tribe. A copy of the request or proposal for the change in placement shall be  
3 attached to the notice. If all of the parties consent, the court may proceed  
4 immediately with the hearing.

5 **SECTION 308.** 938.357 (2m) (bm) of the statutes is created to read:

6 938.357 (2m) (bm) *Indian juvenile; notice.* If the proposed change in placement  
7 would change the placement of an Indian juvenile placed in the juvenile's home  
8 under s. 938.13 (4), (6), (6m), or (7) to a placement outside the juvenile's home, notice  
9 under par. (b) to the Indian juvenile's parent shall be provided in the manner  
10 specified in s. ~~938.275 (1) (a)~~. In like manner, the court shall also provide notice of  
11 the hearing, together with a copy of the request or proposal for the change in  
12 placement, to the Indian juvenile's Indian custodian and tribe. No hearing on the  
13 request or proposal may be held until at least 10 days after receipt of the notice by  
14 the Indian juvenile's parent, Indian custodian, and tribe. On request of the Indian  
15 juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of  
16 up to 20 additional days to enable the requester to prepare for the hearing.

17 **SECTION 309.** 938.357 (2m) (c) of the statutes ~~(as affected by 2005 Wisconsin~~

18 ~~Act 344)~~ is amended to read:

19 938.357 (2m) (c) *In-home to out-of-home placement; findings required.* If the  
20 court changes the juvenile's placement from a placement in the juvenile's home to a  
21 placement outside the juvenile's home, the change in placement order shall contain  
22 the findings under sub. (2v) (a) 1., one of the statements under sub. (2v) (a) 2., and,  
23 if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b)  
24 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If  
25 the court changes the placement of an Indian juvenile who is in need of protection

938.328 (6)(a)

1 or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the juvenile's home  
2 to a placement outside the juvenile's home, the change in placement order shall, in  
3 addition, comply with the order of placement preference under s. ~~938.345 (1)(a)~~ and  
4 contain the findings under sub. (2v) (a) 4.

under s. 938.328 (4)(d) 1.

5 SECTION 310. 938.357 (2v) (a) 4. of the statutes is created to read:

6 938.357 (2v) (a) 4. If the change in placement order changes an Indian  
7 juvenile's placement from a placement in the Indian juvenile's home under s. 938.13  
8 (4), (6), (6m), or (7) to a placement outside the Indian juvenile's home, a finding  
9 supported by clear and convincing evidence, including the testimony of one or more  
10 qualified expert witnesses, that continued custody of the Indian juvenile by the  
11 parent or Indian custodian is likely to result in serious emotional or physical damage  
12 to the juvenile, and a finding supported by clear and convincing evidence that the  
13 agency primarily responsible for implementing the dispositional order has made  
14 active efforts to prevent the breakup of the Indian family and that those efforts have  
15 proved unsuccessful.

under s. 938.328 (4)(d) 2.

16 SECTION 311. 938.357 (2v) (c) 1. of the statutes, ~~as affected by 2005 Wisconsin~~  
17 ~~Act 344~~ is renumbered 938.357 (2v) (c) and amended to read:

18 938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances  
19 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold  
20 a hearing under s. 938.38 (4m) within 30 days after the date of that finding to  
21 determine the permanency plan for the juvenile. ~~If a hearing is held under this~~  
22 ~~paragraph, the agency responsible for preparing the permanency plan shall file the~~  
23 ~~permanency plan with the court at least 5 days before the date of the hearing.~~

24 SECTION 312. 938.357 (2v) (c) 2. of the statutes is repealed.

25 SECTION 313. 938.357 (2v) (c) 3. of the statutes is repealed.

1) SECTION 314. 938.363 (1) (a) of the statutes, ~~as affected by 2005 Wisconsin Act~~  
2) ~~344~~, is amended to read:

3           938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian,  
4 any person or agency bound by a dispositional order <sup>^</sup> or the district attorney or  
5 corporation counsel in the county in which the dispositional order was entered or, if  
6 the juvenile is an Indian juvenile who is in need of protection or services under s.  
7 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a  
8 revision in the order that does not involve a change in placement, including a revision  
9 with respect to the amount of child support to be paid by a parent. The court may  
10 also propose a revision. The request or court proposal shall set forth in detail the  
11 nature of the proposed revision and what new information is available that affects  
12 the advisability of the court's disposition. The request or court proposal shall be  
13 submitted to the court. The court shall hold a hearing on the matter prior to any  
14 revision of the dispositional order if the request or court proposal indicates that new  
15 information is available that affects the advisability of the court's dispositional order,  
16 unless written waivers of objections to the revision are signed by all parties entitled  
17 to receive notice and the court approves.

18) SECTION 315. 938.363 (1) (b) of the statutes, ~~as affected by 2005 Wisconsin Act~~  
19) ~~344~~, is amended to read:

20           938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court  
21 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all  
22 parties bound by the dispositional order, the juvenile's foster parent, treatment  
23 foster parent, or other physical custodian described in s. 48.62 (2), and the district  
24 attorney or corporation counsel in the county in which the dispositional order was  
25 entered ~~at least 3 days prior to the hearing~~ and, if the juvenile is an Indian juvenile

1 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian  
2 juvenile's Indian custodian and tribe. A copy of the request or proposal shall be  
3 attached to the notice. If all parties consent, the court may proceed immediately with  
4 the hearing. No revision may extend the effective period of the original order, or  
5 revise an original order under s. 938.34 (3) (f) or (6) (am) to impose more than a total  
6 of 30 days of detention, nonsecure custody, or inpatient treatment on a juvenile.

7 **SECTION 316.** 938.365 (1m) of the statutes, ~~as affected by 2005 Wisconsin Act~~

8 ~~344~~ is amended to read:

9 938.365 **(1m)** REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal  
10 custodian, any person or agency bound by the dispositional order, the district  
11 attorney or corporation counsel in the county in which the dispositional order was  
12 entered, ~~or~~ the court on its own motion, or, if the juvenile is an Indian juvenile who  
13 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian  
14 juvenile's Indian custodian may request an extension of an order under s. 938.355.  
15 The request shall be submitted to the court ~~which~~ that entered the order. An order  
16 under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or  
17 inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other  
18 orders or portions of orders under s. 938.355 may be extended only as provided in this  
19 section.

20 **SECTION 317.** 938.365 (2) of the statutes, ~~as affected by 2005 Wisconsin Act 344,~~

21 is amended to read:

22 938.365 **(2)** NOTICE. No order may be extended without a hearing. The court  
23 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the  
24 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal  
25 custodian, all of the parties present at the original hearing, the juvenile's foster

1 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),  
2 and the district attorney or corporation counsel in the county in which the  
3 dispositional order was entered ~~of the time and place of the hearing, and, if the~~  
4 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13  
5 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian.

6 SECTION 318. 938.365 (2g) (b) 4. of the statutes is created to read:

7 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside  
8 the home under s. 938.13 (4), (6), (6m), or (7), specific information showing that active  
9 efforts have been made to prevent the breakup of the Indian family and that those  
10 efforts have proved unsuccessful.

11 SECTION 319. 938.365 (2m) (a) 1. of the statutes ~~is affected by 2005 Wisconsin~~  
12 Act 344, is amended to read: under s. 938.328 (4)(d) 2.

13 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of  
14 extension. If the juvenile is placed outside of his or her home, the person or agency  
15 primarily responsible for providing services to the juvenile shall present as evidence  
16 specific information showing that the person or agency has made reasonable efforts  
17 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile  
18 to the home is the goal of the permanency plan and any of the circumstances under  
19 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home  
20 under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for  
21 providing services to the Indian juvenile shall also present as evidence specific  
22 information showing that the person or agency has made active efforts to prevent the  
23 breakup of the Indian family and that those efforts have proved unsuccessful.

24 1m. The court shall make findings of fact and conclusions of law based on the  
25 evidence. The findings of fact shall include a finding as to whether reasonable efforts

Under s. 938.029 (4)(d)2.

1 were made by the agency primarily responsible for providing services to the juvenile  
2 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile  
3 to the home is the goal of the permanency plan and the court finds that any of the  
4 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian  
5 juvenile who is placed outside the home under s. 938.13 (4), (6), (6m), or (7), the  
6 findings of fact shall also include a finding as to whether active efforts were made to  
7 prevent the breakup of the Indian family and as to whether those efforts have proved  
8 unsuccessful. An order shall be issued under s. 938.355.

9 SECTION 320. 938.365 (2m) (a) 3. of the statutes as affected by 2005 Wisconsin

10 Act 344 is amended to read:

11 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.  
12 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan  
13 and the findings under subd. 2. on a case-by-case basis based on circumstances  
14 specific to the juvenile and shall document or reference the specific information on  
15 which those findings are based in the order issued under s. 938.355. An order that  
16 merely references subd. 1. 1m. or 2. without documenting or referencing that specific  
17 information in the order or an amended order that retroactively corrects an earlier  
18 order that does not comply with this subdivision is not sufficient to comply with this  
19 subdivision.

20 SECTION 321. 938.365 (2m) (ad) 1. of the statutes as affected by 2005 Wisconsin

21 Act 344 is renumbered 938.365 (2m) (ad) and amended to read:

22 938.365 (2m) (ad) If the court finds that any of the circumstances under s.  
23 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing  
24 under s. 938.38 (4m) within 30 days after the date of that finding to determine the  
25 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~

1 agency responsible for preparing the permanency plan shall file the permanency  
2 plan with the court not less than 5 days before the date of the hearing.

3 SECTION 322. 938.365 (2m) (ad) 2. of the statutes is repealed.

4) SECTION 323. 938.365 (2m) (ag) of the statutes ~~as affected by 2005 Wisconsin~~

5) ~~Act 344~~ is amended to read:

6 938.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,  
7 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under  
8 par. (ad) 2. or sub. (2) an opportunity to be heard at the hearing by permitting the  
9 foster parent, treatment foster parent, or other physical custodian to make a written  
10 or oral statement during the hearing, or to submit a written statement prior to the  
11 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,  
12 or other physical custodian who receives notice of a hearing under par. (ad) 2. or sub.  
13 (2) and an opportunity to be heard under this paragraph does not become a party to  
14 the proceeding on which the hearing is held solely on the basis of receiving that notice  
15 and having the opportunity to be heard.

16 SECTION 324. 938.38 (3) (intro.) of the statutes is amended to read:

17 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) ~~1.~~, the agency shall file  
18 the permanency plan with the court within 60 days after the date on which the  
19 juvenile was first removed from his or her home, except under either of the following  
20 conditions:

21 SECTION 325. 938.38 (4) (i) of the statutes is created to read:

22 938.38 (4) (i) If the juvenile is an Indian juvenile who is in need of protection  
23 or services under s. 938.13 (4), (6), (6m), or (7), all of the following:

24 1. The name, address, and telephone number of the Indian juvenile's Indian  
25 custodian and tribe.

Under s. 938.028 (4)(d) 2,

1 2. A description of the remedial services and rehabilitation programs offered,  
2 in an effort to prevent the breakup of the Indian family.

938.029 (b)(a)

3 3. A statement as to whether the Indian juvenile's placement is in compliance  
4 with the order of placement preference specified in s. ~~938.345 (1m)~~ and, if the  
5 placement is not in compliance with that order, an explanation for the departure  
6 from that order.

938.345 (1m)

7 SECTION 326. 938.38 (4m) of the statutes is created to read:

8 938.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding  
9 under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the  
10 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent,  
11 the court shall hold a hearing within 30 days after the date of that finding to  
12 determine the permanency plan for the juvenile. If a hearing is held under this  
13 paragraph, the agency responsible for preparing the permanency plan shall file the  
14 permanency plan with the court not less than 5 days before the date of the hearing.

15 (b) At least 10 days before the date of the hearing the court shall notify the  
16 juvenile, any parent, guardian, and legal custodian of the juvenile, and any foster  
17 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2)  
18 of the juvenile of the time, place, and purpose of the hearing.

19 (c) If the court knows or has reason to know that the juvenile is an Indian  
20 juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4),  
21 (6), (6m), or (7), notice under par. (b) to the Indian juvenile's parent shall be provided  
22 in the manner specified in s. ~~938.273 (1) (a)~~. In like manner, the court shall also

938.273 (1) (a)

23 notify the Indian juvenile's Indian custodian and tribe. No hearing may be held  
24 under par. (a) until at least 10 days after receipt of the notice by the Indian juvenile's  
25 parent, Indian custodian, and tribe. On request of the Indian juvenile's parent,

938.028 (4)(a)

1 Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional  
2 days to enable the requester to prepare for the hearing.

3 (d) The court shall give a foster parent, treatment foster parent, or other  
4 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)  
5 an opportunity to be heard at the hearing by permitting the foster parent, treatment  
6 foster parent, or other physical custodian to make a written or oral statement during  
7 the hearing, or to submit a written statement prior to the hearing, relevant to the  
8 issues to be determined at the hearing. The foster parent, treatment foster parent,  
9 or other physical custodian does not become a party to the proceeding on which the  
10 hearing is held solely on the basis of receiving that notice and having the opportunity  
11 to be heard.

12 **SECTION 327.** 938.38 (5) (b) of the statutes is amended to read:

13 938.38 (5) (b) The court or the agency shall notify ~~the parents of the juvenile,~~  
14 ~~the juvenile, if he or she is 10 years of age or older, and; the juvenile's parent,~~  
15 ~~guardian, and legal custodian;~~ the juvenile's foster parent, the juvenile's treatment  
16 foster parent, the operator of the facility in which the juvenile is living, or the relative  
17 with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is in  
18 need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's  
19 Indian custodian and tribe of the date, time, and place of the review, of the issues to  
20 be determined as part of the review, and of the fact that they may have an opportunity  
21 to be heard at the review by submitting written comments not less than 10 working  
22 days before the review or by participating at the review. The court or agency shall  
23 notify the person representing the interests of the public, the juvenile's counsel, and  
24 the juvenile's guardian ad litem of the date of the review, of the issues to be  
25 determined as part of the review, and of the fact that they may submit written

938.028 (4)(a)

1 comments not less than 10 working days before the review. The notices under this  
2 paragraph shall be provided in writing not less than 30 days before the review and  
3 copies of the notices shall be filed in the juvenile's case record.

4 SECTION 328. 938.38 (5) (bm) of the statutes is created to read:

5 938.38 (5) (bm) If the juvenile is an Indian juvenile who is in need of protection  
6 or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian  
7 juvenile's parent, Indian custodian, and tribe shall be provided in the manner  
8 specified in s. ~~938.273 (1) (a)~~. No review may be held until at least 10 days after

9 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On  
10 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall  
11 grant a continuance of up to 20 additional days to enable the requester to prepare  
12 for the review.

Under s. 938.028 (4)(a)2.

13 SECTION 329. 938.38 (5) (c) 8. of the statutes is created to read:

14 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is in need of protection  
15 or services under s. 938.13 (4), (6), (6m), or (7), whether active efforts were made by  
16 the agency to prevent the breakup of the Indian family and whether those efforts  
17 have proved unsuccessful.

18 SECTION 330. 938.38 (5) (d) of the statutes is amended to read:

19 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the  
20 permanency plan shall, at least 5 days before a review by a review panel, provide to  
21 each person appointed to the review panel, the juvenile's parent, guardian, and legal  
22 custodian, the person representing the interests of the public, the juvenile's counsel  
23 and, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who  
24 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian  
25 juvenile's Indian custodian and tribe a copy of the permanency plan and any written

1 comments submitted under par. (b). Notwithstanding s. 938.78 (2) (a), a person  
2 appointed to a review panel, the person representing the interests of the public, the  
3 juvenile's counsel ~~and~~, the juvenile's guardian ad litem, and, if the juvenile is an  
4 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),  
5 or (7), the Indian juvenile's Indian custodian and tribe may have access to any other  
6 records concerning the juvenile for the purpose of participating in the review. A  
7 person permitted access to a juvenile's records under this paragraph may not disclose  
8 any information from the records to any other person.

9 **SECTION 331.** 938.38 (5) (e) of the statutes is amended to read:

10 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of  
11 the determinations under par. (c) and shall provide a copy to the court that entered  
12 the order; the juvenile or the juvenile's counsel ~~or~~, guardian ad litem; the person  
13 representing the interests of the public; the juvenile's parent ~~or~~, guardian ~~and~~, or  
14 legal custodian; the juvenile's foster parent, the juvenile's treatment foster parent,  
15 or the operator of the facility where the juvenile is living; and, if the juvenile is an  
16 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),  
17 or (7), the Indian juvenile's Indian custodian and tribe.

18 **SECTION 332.** 938.38 (5m) (b) of the statutes is amended to read:

19 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court  
20 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the  
21 juvenile's foster parent or treatment foster parent, the operator of the facility in  
22 which the juvenile is living, or the relative with whom the juvenile is living; the  
23 juvenile's counsel, and the juvenile's guardian ad litem; the agency that prepared the  
24 permanency plan; ~~and~~ the person representing the interests of the public; and, if the  
25 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13

1 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time,  
2 and place of the hearing. 938.328 (4)(a)

3 **SECTION 333.** 938.38 (5m) (bm) of the statutes is created to read:

4 938.38 (5m) (bm) If the juvenile is an Indian juvenile who is in need of  
5 protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the  
6 Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner  
7 specified in s. 938.273 (1) (a). No hearing under par. (a) may be held until at least  
8 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian,  
9 and tribe. On request of the Indian juvenile's parent, Indian custodian, or tribe, the  
10 court shall grant a continuance of up to 20 additional days to enable the requester  
11 to prepare for the hearing.

12 **SECTION 334.** 938.38 (5m) (d) of the statutes is amended to read:

13 938.38 (5m) (d) At least 5 days before the date of the hearing the agency that  
14 prepared the permanency plan shall provide a copy of the permanency plan and any  
15 written comments submitted under par. (c) to the court, to the juvenile's parent,  
16 guardian, and legal custodian, to the person representing the interests of the public,  
17 and to the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian  
18 juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7),  
19 to the Indian juvenile's Indian custodian and tribe. Notwithstanding s. 938.78 (2)  
20 (a), the person representing the interests of the public and, the juvenile's counsel or  
21 guardian ad litem, and, if the juvenile is an Indian juvenile who is in need of  
22 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian  
23 custodian and tribe may have access to any other records concerning the juvenile for  
24 the purpose of participating in the review. A person permitted access to a juvenile's

1 records under this paragraph may not disclose any information from the records to  
2 any other person.

3 **SECTION 335.** 938.38 (5m) (e) of the statutes is amended to read:

4 938.38 **(5m)** (e) After the hearing, the court shall make written findings of fact  
5 and conclusions of law relating to the determinations under sub. (5) (c) and shall  
6 provide a copy of those findings of fact and conclusions of law to the juvenile; the  
7 juvenile's parent, guardian, and legal custodian; the juvenile's foster parent or  
8 treatment foster parent, the operator of the facility in which the juvenile is living,  
9 or the relative with whom the juvenile is living; the agency that prepared the  
10 permanency plan; ~~and the person representing the interests of the public; and, if the~~  
11 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13  
12 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The court shall  
13 make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on  
14 circumstances specific to the juvenile and shall document or reference the specific  
15 information on which those findings are based in the findings of fact and conclusions  
16 of law prepared under this paragraph. Findings of fact and conclusions of law that  
17 merely reference sub. (5) (c) 7. without documenting or referencing that specific  
18 information in the findings of fact and conclusions of law or amended findings of fact  
19 and conclusions of law that retroactively correct earlier findings of fact and  
20 conclusions of law that do not comply with this paragraph are not sufficient to comply  
21 with this paragraph.

under **S. 938.028 (4)(d)2.**

22 **SECTION 336.** 938.38 (6) (cm) of the statutes is created to read:

23 938.38 **(6)** (cm) Standards for active efforts to prevent the breakup of the family  
24 of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),  
25 (6m), or (7).

1 SECTION 337. 938.47 of the statutes is created to read:

2 **938.47 Indian juvenile; invalidation of action.** Any Indian juvenile who  
3 is the subject of an out-of-home care placement under s. 938.13 (4), (6), (6m), or (7),  
4 any parent or Indian custodian of that Indian juvenile, or the Indian juvenile's tribe  
5 may move the court to invalidate that out-of-home care placement on the grounds  
6 that the out-of-home care placement was made in violation of 25 USC 1911, 1912,  
7 or 1913. If the court finds that those grounds exist, the court shall invalidate the  
8 out-of-home care placement and order the Indian juvenile to be returned to his or  
9 her parent or Indian custodian.

10 (END)

SEC #. Effective date. This act takes effect  
on the day after publication, except as follows:

¶ (1) A DOPTIVE PLACEMENT OF INDIAN CHILD The  
repeal and recreation of section 48.833 of the statutes  
takes effect on April 1, 2007, or on the day after  
publication, whichever is later.