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. 08A 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.

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0174/4
GMM:lxk:pg

2007 BILL

AN ACT ***to repeal*** 48.01 (2), 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32 (1) (c) 3., 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3., 48.365 (2m) (ad) 2., 48.415 (2) (a) 2., 48.685 (1) (br), 48.685 (1) (e), 48.983 (1) (d), 48.983 (1) (e), 48.983 (1) (h), 938.02 (18g), 938.21 (5) (d) 2., 938.21 (5) (d) 3., 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d) (c) 2., 938.355 (2d) (c) 3., 938.357 (2v) (c) 2., 938.357 (2v) (c) 3., 938.365 (2m) (ad) 2. and 938.538 (6m) (a) 1.; ***to renumber*** 48.01 (1), 48.01 (1) (h) and 938.02 (9m); ***to renumber and amend*** 48.20 (8), 48.21 (5) (d) 1., 48.273 (1), 48.32 (1) (c) 1., 48.355 (2d) (c) 1., 48.357 (1) (am) 2., 48.357 (2m) (c), 48.357 (2v) (c) 1., 48.365 (2m) (ad) 1., 48.424 (1), 48.981 (1) (cs), 938.21 (5) (d) 1., 938.273 (1) (c), 938.32 (1) (d) 1., 938.355 (2d) (c) 1., 938.357 (2m) (c), 938.357 (2v) (c) 1. and 938.365 (2m) (ad) 1.; ***to amend*** 48.02 (2), 48.02 (13), 48.02 (15), 48.13 (intro.), 48.14 (intro.), 48.15, 48.19 (2), 48.195 (2) (d) 7., 48.20 (2) (ag), 48.20 (2) (b), 48.20 (3), 48.20 (7) (c) (intro.), 48.20 (7) (c) 1., 48.20 (7) (d), 48.21 (3) (am), 48.21 (3) (b), 48.21 (3) (d), 48.21 (3) (e), 48.23 (2),

48.23 (4), 48.235 (4) (a) 7., 48.235 (4m) (a) 7., 48.255 (1) (cm), 48.255 (1m) (d), 48.255 (2), 48.255 (4), 48.27 (3) (a) 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d), 48.30 (1), 48.30 (2), 48.30 (6) (a), 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315 (1m), 48.315 (2), 48.345 (3) (intro.), 48.355 (2) (d), 48.357 (1) (am) 1., 48.357 (1) (am) 3., 48.357 (1) (c) 2., 48.357 (1) (c) 3., 48.357 (2m) (a), 48.357 (2m) (b), 48.363 (1) (a), 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a) 3., 48.365 (2m) (ag), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e), 48.38 (5m) (b), 48.38 (5m) (d), 48.38 (5m) (e), 48.415 (intro.), 48.42 (1) (d), 48.42 (2) (c), 48.42 (4) (a), 48.422 (1), 48.422 (2), 48.422 (6) (a), 48.422 (8), 48.423 (1), 48.424 (2) (intro.), 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.), 48.424 (4) (a), 48.424 (4) (b), 48.424 (5), 48.425 (1) (intro.), 48.428 (2) (a), 48.428 (2) (b), 48.43 (5) (c), 48.43 (5m), 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (3m) (intro.), 48.48 (8m), 48.485, 48.487 (2), 48.487 (3) (b), 48.487 (4m) (b) (intro.), 48.487 (4m) (c), 48.487 (4m) (d), 48.563 (3), 48.565 (intro.), 48.57 (3p) (h) 2., 48.57 (3p) (h) 3. (intro.), 48.57 (3p) (h) 4., 48.57 (3t), 48.63 (1), 48.63 (4), 48.63 (5) (b), 48.63 (5) (c), 48.63 (5) (d) 3., 48.63 (5) (d) 4., 48.63 (5) (d) 5., 48.63 (5) (d) 6., 48.645 (1) (a), 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645 (2) (a) 4., 48.645 (2) (b), 48.685 (5) (a), 48.685 (5d) (a) (intro.), 48.685 (5d) (a) 2., 48.685 (5d) (a) 3., 48.685 (5d) (a) 3m., 48.685 (5d) (a) 4., 48.685 (5d) (b), 48.825 (1) (b), 48.83 (1), 48.831 (2), 48.833, 48.837 (4) (c), 48.837 (4) (d), 48.837 (6) (c), 48.85 (1), 48.88 (2) (a) (intro.), 48.88 (2) (b), 48.89 (1), 48.91 (3), 48.93 (1d), 48.977 (4) (a) 1., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.978 (2) (b) 11., 48.981 (1) (ct), 48.981 (1) (i), 48.981 (3) (bm) (intro.), 48.981 (3) (bm) 1., 48.981 (3) (bm) 2., 48.981 (3) (bm) 3., 48.981 (7) (a) 2., 48.981 (7) (a) 10m., 48.981 (7) (a) 10r., 48.981 (7) (a) 11m., 48.981 (7) (am), 48.981 (8) (a), 48.983 (1) (b) 1. b., 822.015, 938.02 (10m), 938.02 (12m), 938.02 (13), 938.02 (15), 938.13

(intro.), 938.15, 938.185 (4) (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185 (4) (b), 938.19 (2), 938.20 (2) (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1., 938.20 (7) (d), 938.20 (8) (a), 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag), 938.21 (3) (am), 938.21 (3) (b), 938.21 (3) (d), 938.21 (3) (e), 938.23 (4), 938.235 (4) (a) 7., 938.24 (2r) (title), 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r) (a) 2., 938.24 (2r) (b), 938.243 (1) (e), 938.25 (2g) (title), 938.255 (1) (cm), 938.255 (1) (cr) 1. a., 938.255 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255 (2), 938.255 (4), 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b), 938.299 (6) (d), 938.299 (9) (title), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30 (6) (a), 938.30 (7), 938.305, 938.31 (7) (a), 938.315 (2), 938.355 (2) (d), 938.355 (6) (an) 1., 938.355 (6) (b), 938.355 (6m) (am) 1., 938.355 (6m) (c), 938.357 (1) (am) 1., 938.357 (1) (am) 2., 938.357 (1) (am) 3., 938.357 (1) (c) 2., 938.357 (1) (c) 3., 938.357 (2m) (a), 938.357 (2m) (b), 938.363 (1) (a), 938.363 (1) (b), 938.365 (1m), 938.365 (2), 938.365 (2m) (a) 1., 938.365 (2m) (a) 3., 938.365 (2m) (ag), 938.38 (3) (intro.), 938.38 (5) (b), 938.38 (5) (d), 938.38 (5) (e), 938.38 (5m) (b), 938.38 (5m) (d), 938.38 (5m) (e) and 938.538 (6m) (a) 4.; ***to repeal and recreate*** 48.028, 938.02 (15c) and 938.028; and ***to create*** 48.02 (8d), 48.02 (8m), 48.02 (8p), 48.02 (8r), 48.02 (15c), 48.02 (18j), 48.14 (12), 48.23 (2g), 48.255 (1) (g), 48.255 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299 (9), 48.315 (1) (j), 48.33 (4) (d), 48.335 (3j), 48.345 (3m), 48.355 (2) (b) 6v., 48.355 (2d) (d), 48.357 (1) (am) 1g., 48.357 (1) (am) 1m., 48.357 (1) (c) 1m., 48.357 (1) (c) 2m., 48.357 (2m) (am), 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b) 4., 48.38 (4) (i), 48.38 (4m), 48.38 (5) (bm), 48.38 (5) (c) 8., 48.38 (5m) (bm), 48.41 (2) (e), 48.417 (2) (cm), 48.42 (1) (e), 48.42 (1) (f), 48.42 (2g) (ag), 48.424 (1) (b), 48.424 (1) (c), 48.425 (1) (cm), 48.427 (5), 48.427 (6) (b) 4., 48.43 (5) (bm), 48.831 (1r), 48.831 (4) (cm),

1 48.837 (2) (e), 48.88 (2) (ag), 48.93 (1v), 48.977 (4) (c) 1. j., 48.977 (4) (c) 2m.,
2 48.977 (4) (g) 4., 806.245 (1m), 938.02 (8d), 938.02 (8g), 938.02 (8m), 938.02 (8p),
3 938.02 (8r), 938.02 (18j), 938.23 (2g), 938.255 (1) (g), 938.27 (3) (d), 938.273 (1)
4 (ag), 938.273 (1) (c) 2., 938.299 (10), 938.315 (1) (a) 11., 938.33 (4) (d), 938.335
5 (3j), 938.345 (1m), 938.355 (2) (b) 6v., 938.355 (2d) (d), 938.355 (6) (bm), 938.355
6 (6) (cr), 938.355 (6m) (bm), 938.355 (6m) (cr), 938.357 (1) (am) 1g., 938.357 (1)
7 (am) 1m., 938.357 (1) (c) 1m., 938.357 (1) (c) 2m., 938.357 (2m) (am), 938.357
8 (2m) (bm), 938.357 (2v) (a) 4., 938.365 (2g) (b) 4., 938.38 (4) (i), 938.38 (4m),
9 938.38 (5) (bm), 938.38 (5) (c) 8. and 938.38 (5m) (bm) of the statutes; **relating**
10 **to:** Indian child welfare.

Analysis by the Legislative Reference Bureau

Introduction

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

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

2. A termination of parental rights (TPR) proceeding.

3. A temporary placement of an Indian child in a foster home or institution after a TPR, but prior to or in lieu of an adoptive placement (preadoptive placement).

4. An adoptive placement.

This bill incorporates the jurisdictional provisions of ICWA and the minimum standards for Indian child custody proceedings established by ICWA into the provisions of the Children's Code relating to child in need of protection or services (CHIPS), TPR, and adoption proceedings and the provisions of the Juvenile Justice Code relating to juvenile in need of protection or services (JIPS) proceedings, other

than proceedings that are based on the commission of an act that would be a crime if committed by an adult.

Jurisdiction

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

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

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

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

1. Specifies that the provisions of ICWA and of the Children's Code and Juvenile Justice Code relating to Indian child custody proceedings apply to any Indian child custody proceeding regardless of whether the Indian child is in the custody of an Indian parent, Indian custodian, extended family member, or other person at the commencement of the proceeding and whether the Indian child resides or is domiciled on or off a reservation.

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

3. Permits a juvenile court to find good cause to deny transfer of a proceeding to an Indian child's tribe only if it is shown that the Indian child is 12 years of age or over and objects to the transfer or that the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the

parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

Out-of-home care placements and TPR proceedings

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

This bill requires an Indian child's parent, Indian custodian, and tribe to be notified of a CHIPS, JIPS, or TPR proceeding involving the Indian child, of a change in placement in a CHIPS or JIPS proceeding involving the Indian child, or of a hearing to determine or review the permanency plan for the Indian child by certified mail for the first hearing at the plea, fact-finding, and dispositional stages of a proceeding and by mail, personal delivery, or facsimile transmission, but not electronic mail, for subsequent hearings in a stage of a proceeding. (A permanency plan is a plan designed to ensure that a child is reunified with his or her family whenever appropriate or that the child quickly attains a placement providing long-term stability.) The bill prohibits a CHIPS, JIPS, or TPR hearing, a change in placement hearing, or a permanency plan determination or review hearing from being held until at least ten days after receipt of notice of the hearing by the parent, Indian custodian, or tribe or until at least 25 days after receipt of notice of the hearing by the U.S. secretary of the interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the hearing.

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

ICWA requires a party seeking to effect an out-of-home care placement of, or a TPR to, an Indian child to satisfy the state court that active efforts have been made to provide remedial services and rehabilitation programs designed to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. ICWA

also prohibits a state court from ordering an out-of-home care placement of, or TPR to, an Indian child in the absence of a determination, supported by clear and convincing evidence in the case of out-of-home care placement and by evidence beyond a reasonable doubt in the case of TPR, including the testimony of qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child.

This bill requires a CHIPS or JIPS order or a change in placement order removing an Indian child from his or her home and placing the Indian child outside the home to include a finding by the juvenile court or jury, supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by his or her parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child and a finding, supported by clear and convincing evidence that the agency primarily responsible for providing services to the Indian child has made active efforts to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. The bill also requires the juvenile court or jury in a TPR proceeding to determine if it is proved beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and if it is proved beyond a reasonable doubt that active efforts have been made to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. In addition, the bill requires an order extending a CHIPS or JIPS dispositional order for an Indian child who is placed outside the home and a summary of a permanency plan review for such a child to include a determination as to whether active efforts were made to prevent the breakup of the Indian family and as to whether those efforts have proved unsuccessful.

The bill also changes current law with respect to the grounds for involuntary TPR. Specifically, current law provides various grounds for involuntary TPR, including abandonment, continuing need of protection or services (continuing CHIPS), continuing parental disability, continuing denial of physical placement or visitation, child abuse, and failure to assume parental responsibility. Currently, one of the elements that must be proved to establish continuing CHIPS is that the agency responsible for the care of the child and the family has made a reasonable effort to provide the services ordered by the juvenile court. Currently, "reasonable effort" is defined as an earnest and conscientious effort to take good faith steps to provide the services ordered by the juvenile court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent, and other relevant circumstances. This bill requires those efforts to be proved to establish any involuntary TPR ground.

The bill defines a "qualified expert witness" as a person who is a member of the Indian child's tribe knowledgeable in the tribe's customs relating to family organization or child-rearing practices, a member of another tribe who is knowledgeable in those customs, a professional person having extensive knowledge of those customs, or a layperson having substantial knowledge of those customs and

requires a qualified expert witness to be chosen in that order of preference. The bill also specifies that the evidence of active efforts to prevent the breakup of the Indian family must show that there has been a vigorous and concerted level of case work beyond the level that typically constitutes reasonable efforts to prevent the removal of the child from the home and requires the active efforts to be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe and to utilize the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members, and other individual Indian caregivers.

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

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

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

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

3. An Indian foster home or treatment foster home licensed or approved by the Department of Health and Family Services (DHFS), a county department of human services or social services (county department), or a child welfare agency.

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

The bill requires the juvenile court to designate a placement that is the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account the Indian child's special needs. The bill also specifies that the standards to be applied in meeting the placement preference requirements of the

bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

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

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

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

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

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

This bill provides that a voluntary consent to an out-of-home care or placement of, or TPR to, an Indian child is valid only if the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The bill also requires the judge to certify that the parent fully understood the explanation in English or that the explanation was interpreted into a language that the parent understood. Under the bill, any consent to an out-of-home care placement or TPR given prior to or within ten days after the birth of an Indian child is not valid.

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

Adoption

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

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

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

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

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

ICWA permits a biological parent or former Indian custodian of an Indian child who has been adopted to petition for return of custody of the Indian child when a final decree of adoption of the Indian child has been vacated or set aside or when the adoptive parents of the Indian child voluntarily consent to TPR to the Indian child. Under ICWA, the state court must grant the petition unless there is a showing that return of custody is not in the best interests of the Indian child.

This bill requires a juvenile court that vacates or sets aside a final order granting adoption of an Indian child or that grants an order voluntarily terminating parental rights to an Indian child of all adoptive parents of the Indian child to notify the Indian child's former parent and former Indian custodian, and the former parent or former Indian custodian may petition for the return of custody of the Indian child. The juvenile court must grant the petition unless there is a showing of good cause that return of custody is not in the best interest of the Indian child.

Finally, ICWA requires a state court that enters a final decree of adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the decree, together with such other information as may be necessary to show the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's biological parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency having files or information relating to the adoptive placement of the Indian child; and 2) inform an Indian individual who has reached the age of 18 years and who was the subject of an adoptive placement, upon application, of the tribal affiliation, if any, of the individual's biological parents and with such other information as may be necessary to protect any rights flowing from the individual's tribal relationship. ICWA also provides that, when a biological parent has filed an affidavit requesting that his or her identity remain confidential, the court must include that affidavit with the information provided to the U.S. secretary of the interior.

This bill requires a juvenile court that enters an order granting adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's birth parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child; 2) give the birth parent an opportunity to file an

affidavit indicating that the birth parent wishes the U.S. secretary of the interior to maintain the confidentiality of the birth parent's identity and include that affidavit with the information provided to the U.S. secretary of the interior; and 3) provide or arrange to provide an Indian adoptee who is 18 years of age or older, upon request, with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

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

1 **SECTION 1.** 48.01 (1) of the statutes is renumbered 48.01.

2 **SECTION 2.** 48.01 (1) (h) of the statutes, as created by 2007 Wisconsin Act 20,
3 is renumbered 48.01 (8).

4 **SECTION 3.** 48.01 (2) of the statutes is repealed.

5 **SECTION 4.** 48.02 (2) of the statutes is amended to read:

6 48.02 **(2)** "Child", when used without further qualification, means a person who
7 is less than 18 years of age, except that for purposes of investigating or prosecuting
8 a person who is alleged to have violated a state or federal criminal law or any civil
9 law or municipal ordinance, "child" does not include a person who has attained 17
10 years of age.

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

12 48.02 **(8d)** "Indian" means any person who is a member of an Indian tribe or
13 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
14 1606.

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

16 48.02 **(8m)** "Indian child's tribe" means one of the following:

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

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

4 **SECTION 7.** 48.02 (8p) of the statutes is created to read:

5 48.02 **(8p)** "Indian custodian" means an Indian person who has legal custody
6 of an Indian child under tribal law or custom or under state law or to whom
7 temporary physical care, custody, and control has been transferred by the parent of
8 the child.

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

10 48.02 **(8r)** "Indian tribe" means any Indian tribe, band, nation, or other
11 organized group or community of Indians that is recognized as eligible for the
12 services provided to Indians by the U.S. secretary of the interior because of Indian
13 status, including any Alaska native village, as defined in 43 USC 1602 (c).

14 **SECTION 9.** 48.02 (13) of the statutes is amended to read:

15 48.02 **(13)** "Parent" means either a biological parent, a husband who has
16 consented to the artificial insemination of his wife under s. 891.40, or a parent by
17 adoption. If the child is a nonmarital child who is not adopted or whose parents do
18 not subsequently intermarry under s. 767.803, "parent" includes a person
19 acknowledged under s. 767.805 or a substantially similar law of another state or
20 adjudicated to be the biological father. "Parent" does not include any person whose
21 parental rights have been terminated. <u>For purposes of the application of s. 48.028</u>
22 <u>and the federal Indian Child Welfare Act, 26 USC 1901 to 1963, "parent" includes an</u>
23 <u>Indian person who has lawfully adopted an Indian child, including an adoption</u>
24 <u>under tribal law or custom, but does not include a parent by adoption who is not an</u>
25 <u>Indian person.</u>

1 **SECTION 10.** 48.02 (15) of the statutes is amended to read:

2 48.02 **(15)** "Relative" means a parent, stepparent, brother, sister, stepbrother,
3 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
4 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
5 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
6 marriage, or legal adoption, or the spouse of any person named in this subsection,
7 even if the marriage is terminated by death or divorce. "Relative" also includes, in
8 the case of an Indian child, an extended family member, as defined in s. 48.028 (2)
9 (am), whether by blood, marriage, or adoption, including adoption under tribal law
10 or custom.

11 **SECTION 11.** 48.02 (15c) of the statutes is created to read:

12 48.02 **(15c)** "Reservation" means Indian country, as defined in 18 USC 1151,
13 or any land not covered under that section to which the title is either held by the
14 United States in trust for the benefit of an Indian tribe or individual or held by an
15 Indian tribe or individual, subject to a restriction by the United States against
16 alienation.

17 **SECTION 12.** 48.02 (18j) of the statutes is created to read:

18 48.02 **(18j)** "Tribal court" means a court that has jurisdiction over Indian child
19 custody proceedings, and that is either a court of Indian offenses or a court
20 established and operated under the code or custom of an Indian tribe, or any other
21 administrative body of an Indian tribe that is vested with authority over Indian child
22 custody proceedings.

23 **SECTION 13.** 48.028 of the statutes is repealed and recreated to read:

24 **48.028 Indian child welfare. (1)** DECLARATION OF POLICY. In Indian child
25 custody proceedings, the best interests of the Indian child shall be determined

1 consistent with the federal Indian Child Welfare Act, 25 USC 1901 to 1963. It is the
2 policy of this state to do all of the following:
3 (a) Cooperate fully with Indian tribes in order to ensure that the federal Indian
4 Child Welfare Act is enforced in this state.
5 (b) Protect the best interests of Indian children and promote the stability and
6 security of Indian tribes and families by doing all of the following:
7 1. Establishing minimum standards for the removal of Indian children from
8 their families and placing those children in out-of-home care placements,
9 preadoptive placements, or adoptive placements that will reflect the unique value of
10 Indian culture.
11 2. Using practices, in accordance with the federal Indian Child Welfare Act, 25
12 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent
13 the voluntary or involuntary out-of-home care placement of Indian children and,
14 when an out-of-home care placement, adoptive placement, or preadoptive
15 placement is necessary, placing an Indian child in a placement that reflects the
16 unique values of the Indian child's tribal culture and that is best able to assist the
17 Indian child in establishing, developing, and maintaining a political, cultural, and
18 social relationship with the Indian child's tribe and tribal community.
19 **(2)** DEFINITIONS. In this section:
20 (a) "Adoptive placement" means the permanent placement of an Indian child
21 for adoption.
22 (am) "Extended family member" means a person who is defined as a member
23 of an Indian child's extended family by the law or custom of the Indian child's tribe
24 or, in the absence of such a law or custom, a person who has attained the age of 18

1 years and who is the Indian child's grandparent, aunt, uncle, brother, sister,
2 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.
3 (b) "Former Indian custodian" means a person who was the Indian custodian
4 of an Indian child before termination of parental rights to and adoption of the Indian
5 child.
6 (c) "Former parent" means a person who was the parent of an Indian child
7 before termination of parental rights to and adoption of the Indian child.
8 (d) "Indian child custody proceeding" means a proceeding governed by the
9 federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following
10 may occur:
11 1. An adoptive placement.
12 2. An out-of-home care placement.
13 3. A preadoptive placement.
14 4. A termination of parental rights, as defined in s. 48.40 (2) to an Indian child.
15 (e) "Out-of-home care placement" means the removal of an Indian child from
16 his or her parent or Indian custodian for temporary placement in a foster home,
17 treatment foster home, group home, residential care center for children and youth,
18 or shelter care facility, in the home of a relative other than a parent, or in the home
19 of a guardian, from which placement the parent or Indian custodian cannot have the
20 child returned upon demand.
21 (f) "Preadoptive placement" means the temporary placement of an Indian child
22 in a foster home, treatment foster home, group home, or residential care center for
23 children and youth, in the home of a relative other than a parent, or in the home of
24 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
25 placement.

1 (g) "Qualified expert witness" means a person who is any of the following:
2 1. A member of the Indian child's tribe recognized by the Indian child's tribal
3 community as knowledgeable regarding the tribe's customs relating to family
4 organization or child-rearing practices.
5 2. A member of another tribe who is knowledgeable regarding the customs of
6 the Indian child's tribe relating to family organization or child-rearing practices.
7 3. A professional person having substantial education and experience in the
8 person's professional speciality and having extensive knowledge of the customs,
9 traditions, and values of the Indian child's tribe relating to family organization and
10 child-rearing practices.
11 4. A layperson having substantial experience in the delivery of child and family
12 services to Indians and substantial knowledge of the prevailing social and cultural
13 standards and child-rearing practices of the Indian child's tribe.
14 **(3)** JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS. (a) *Applicability.*
15 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
16 to any Indian child custody proceeding regardless of whether the Indian child is in
17 the legal custody or physical custody of an Indian parent, Indian custodian, extended
18 family member, or other person at the commencement of the proceeding and whether
19 the Indian child resides or is domiciled on or off of a reservation. A court assigned
20 to exercise jurisdiction under this chapter may not determine whether this section
21 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian
22 child custody proceeding based on whether the Indian child is part of an existing
23 Indian family.
24 (b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive
25 jurisdiction over any Indian child custody proceeding involving an Indian child who

1 resides or is domiciled within the reservation of the tribe, except when that
2 jurisdiction is otherwise vested in the state by federal law and except as provided in
3 subd. 2. If an Indian child is a ward of a tribal court, the Indian tribe shall retain
4 exclusive jurisdiction regardless of the residence or domicile of the child.

5 2. Subdivision 1. does not prevent an Indian child who resides or is domiciled
6 within a reservation, but who is temporarily located off the reservation, from being
7 taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent
8 physical harm or damage to the Indian child. The person taking the Indian child into
9 custody or the intake worker shall immediately release the Indian child from custody
10 upon determining that holding the Indian child in custody is no longer necessary to
11 prevent imminent physical damage or harm to the Indian child and shall
12 expeditiously restore the Indian child to his or her parent or Indian custodian,
13 release the Indian child to an appropriate official of the Indian child's tribe, or
14 initiate an Indian child custody proceeding, as may be appropriate.

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

22 1. A parent of the Indian child objects to the transfer.

23 2. The Indian child's tribe does not have a tribal court or tribal court of the
24 Indian child's tribe declines jurisdiction.

1 3. The court determines that good cause exists to deny the transfer. The court
2 may determine that good cause exists to deny the transfer only if the person opposing
3 the transfer shows to the satisfaction of the court any of the following:
4 a. That the Indian child is 12 years of age or over and objects to the transfer.
5 b. That the evidence or testimony necessary to decide the case cannot be
6 presented in tribal court without undue hardship to the parties or the witnesses and
7 that the tribal court is unable to mitigate the hardship by making arrangements to
8 receive the evidence or testimony by use of telephone or live audiovisual means, by
9 hearing the evidence or testimony at a location that is convenient to the parties and
10 witnesses, or by use of other means permissible under the tribal court's rules of
11 evidence.
12 (d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction
13 under this chapter determines that the petitioner in an Indian child custody
14 proceeding has improperly removed the Indian child from the custody of his or her
15 parent or Indian custodian or has improperly retained custody of the Indian child
16 after a visit or other temporary relinquishment of custody, the court shall decline
17 jurisdiction over the petition and immediately return the Indian child to the custody
18 of the parent or Indian custodian, unless the court determines that returning the
19 Indian child to his or her parent or Indian custodian would subject the Indian child
20 to substantial and immediate danger or the threat of that danger.
21 (e) *Intervention.* An Indian child's Indian custodian or tribe may intervene at
22 any point in an Indian child custody proceeding under this chapter involving an
23 out-of-home care placement of, or termination of parental rights to, the Indian child.
24 (f) *Full faith and credit.* The state shall give full faith and credit to the public
25 acts, records, and judicial proceedings of any Indian tribe that are applicable to an

1 Indian child custody proceeding to the same extent that the state gives full faith and
2 credit to the public acts, records, and judicial proceedings of any other governmental
3 entity.

4 **(4)** COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding involving
5 the out-of-home care placement of, termination of parental rights to, or return of
6 custody under sub. (8) (a) of a child whom the court knows or has reason to know is
7 an Indian child, the court or party seeking the out-of-home care placement,
8 termination of parental rights, or return of custody shall, for the first hearing at the
9 plea, fact-finding, and dispositional stages of the proceeding, notify the Indian
10 child's parent, former parent, Indian custodian, former Indian custodian, and tribe,
11 by certified mail of the pending proceeding and of their right to intervene in the
12 proceeding. Notice of subsequent hearings in a stage of a proceeding shall be in
13 writing and may be given by mail, personal delivery, or facsimile transmission, but
14 not by electronic mail. If the identity or location of the Indian child's parent, former
15 parent, Indian custodian, former Indian custodian, or tribe cannot be determined,
16 that notice shall be given to the U.S. secretary of the interior in like manner. The next
17 hearing in the proceeding may not be held until at least 10 days after receipt of the
18 notice by the parent, former parent, Indian custodian, former Indian custodian, and
19 tribe or until at least 25 days after receipt of the notice by the U.S. secretary of the
20 interior. On request of the parent, former parent, Indian custodian, former Indian
21 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
22 to enable the requester to prepare for that hearing.

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

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

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

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

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

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

1 (e) *Involuntary termination of parental rights; serious damage and active*
2 *efforts.* The court may not order an involuntary termination of parental rights to an
3 Indian child unless all of the following occur:
4 1. The court or jury finds beyond a reasonable doubt, including the testimony
5 of one or more qualified expert witnesses chosen in the order of preference listed in
6 par. (f), that the continued custody of the Indian child by the parent or Indian
7 custodian is likely to result in serious emotional or physical damage to the child.
8 2. The court or jury finds beyond a reasonable doubt that active efforts, as
9 described in par. (g), have been made to provide remedial services and rehabilitation
10 programs designed to prevent the breakup of the Indian family and that those efforts
11 have proved unsuccessful.
12 (f) *Qualified expert witness; order of preference.* A qualified expert witness shall
13 be chosen in the following order of preference:
14 1. A member of the Indian child's tribe described in sub. (2) (g) 1.
15 2. A member of another tribe described in sub. (2) (g) 2.
16 3. A professional person described in sub. (2) (g) 3.
17 4. A layperson described in sub. (2) (g) 4.
18 (g) *Active efforts standard.* The court may not order an Indian child to be placed
19 in an out-of-home care placement or order an involuntary termination of parental
20 rights to an Indian child unless the evidence of active efforts under par. (d) 2. or (e)
21 2. shows that there has been a vigorous and concerted level of case work beyond the
22 level that typically constitutes reasonable efforts, as described in s. 48.355 (2c), or
23 an earnest and conscientious effort, as in s. 48.415 (intro.). The active efforts shall
24 be made in a manner that takes into account the prevailing social and cultural
25 values, conditions, and way of life of the Indian child's tribe and that utilizes the

1 available resources of the Indian child's tribe, tribal and other Indian child welfare
2 agencies, extended family members of the Indian child, and other individual Indian
3 caregivers. The court's consideration of whether active efforts were made under par.
4 (d) 2. or (e) 2. shall include whether all of the following activities were conducted:
5 1. The Indian child's tribe was requested to convene traditional and customary
6 support, actions, and services to resolve the Indian family's issues.
7 2. Representatives of the Indian child's tribe were identified, notified, and
8 invited to participate in all aspects of the Indian child custody proceeding at the
9 earliest possible point in the proceeding.
10 3. Extended family members of the Indian child were consulted to identify and
11 provide family structure and support for the Indian child.
12 4. Frequent visitation was made to the Indian child's home.
13 5. Contact was made with extended family members of the Indian child to
14 assure appropriate cultural connections.
15 6. All family preservation alternatives appropriate to the Indian child's tribe
16 were exhausted.
17 7. Community resources offering housing, financial, and transportation
18 assistance were identified, information about those resources was provided to the
19 Indian family, and the Indian family was actively assisted in accessing those
20 resources.
21 **(5)** VOLUNTARY PROCEEDINGS; CONSENT; WITHDRAWAL. (a) *Out-of-home care*
22 *placement.* A voluntary consent by a parent or Indian custodian to an out-of-home
23 care placement of an Indian child under s. 48.63 (1) or (5) (b) is not valid unless the
24 consent is executed in writing, recorded before a judge, and accompanied by a written
25 certification by the judge that the terms and consequences of the consent were fully

1 explained in detail to and were fully understood by the parent or Indian custodian.
2 The judge shall also certify that the parent or Indian custodian fully understood the
3 explanation in English or that the explanation was interpreted into a language that
4 the parent or Indian custodian understood. Any consent given under this paragraph
5 prior to or within 10 days after the birth of the Indian child is not valid. A parent or
6 Indian custodian who has executed a consent under this paragraph may withdraw
7 the consent for any reason at any time, and the Indian child shall be returned to the
8 parent or Indian custodian. A parent or Indian custodian who has executed a consent
9 under this paragraph may also move to invalidate the out-of-home care placement
10 under sub. (6).

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

1 (c) *Withdrawal of consent after order granting adoption.* After the entry of a
2 final order granting adoption of an Indian child, a parent who has consented to
3 termination of parental rights under s. 48.41 (2) (e) may withdraw that consent and
4 move the court for relief from the judgment on the grounds that the consent was
5 obtained through fraud or duress. Any such motion shall be filed within 2 years after
6 the entry of an order granting adoption of the Indian child. A motion under this
7 subsection does not affect the finality or suspend the operation of the judgment or
8 order terminating parental rights or granting adoption. If the court finds that the
9 consent was obtained through fraud or duress, the court shall vacate the judgment
10 or order terminating parental rights and, if applicable, the order granting adoption
11 and return the Indian child to the custody of the parent.

12 **(6)** INVALIDATION OF ACTION. Any Indian child who is the subject of an
13 out-of-home care placement or of a termination of parental rights proceeding, any
14 parent or Indian custodian from whose custody that Indian child was removed, or the
15 Indian child's tribe may move the court to invalidate that out-of-home care
16 placement or termination of parental rights on the grounds that the out-of-home
17 care placement was made or the termination of parental rights was ordered in
18 violation of sub. (3), (4), or (5) or 25 USC 1911, 1912, or 1913. If the court finds that
19 those grounds exist, the court shall invalidate the out-of-home care placement or
20 termination of parental rights.

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

25 1. An extended family member of the Indian child.

1 2. Another member of the Indian child's tribe.

2 3. Another Indian family.

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

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

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

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

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

20 (c) *Tribal or personal preferences.* If the Indian child's tribe has established, by
21 resolution, an order of preference that is different from the order specified in par. (a)
22 or (b), the order of preference established by that tribe shall be followed, in the
23 absence of good cause, as described in par. (e), to the contrary, so long as the
24 placement under par. (a) is appropriate for the Indian child's special needs, if any,
25 and the placement under par. (b) is the least restrictive setting appropriate for the

1 Indian child's needs as specified in par. (b). When appropriate, the preference of the
2 Indian child or parent shall be considered, and, when a parent who has consented
3 to the placement evidences a desire for anonymity, that desire shall be given weight,
4 in determining the placement.

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

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

13 a. When appropriate, the request of the Indian child's parent or, if the Indian
14 child is of sufficient age and developmental level to make an informed decision, the
15 Indian child, unless the request is made for the purpose of avoiding the application
16 of this section and the federal Indian Child Welfare Act, 26 USC 1901 to 1963.

17 b. Any extraordinary physical, mental, or emotional health needs of the Indian
18 child requiring highly specialized treatment services as established by the testimony
19 of an export witness, including a qualified expert witness. The length of time that
20 an Indian child has been in a placement does not, in itself, constitute an
21 extraordinary emotional health need.

22 c. The unavailability of a suitable placement for the Indian child after active
23 efforts, as described in sub. (4) (g), have been made to place the Indian child in the
24 order of preference under par. (a), (b), or (c).

1 2. The burden of establishing good cause to depart from the order of placement
2 preference under par. (a), (b), or (c) shall be on the party requesting that departure.
3 (f) *Report of placement.* The department, a county department, or a child
4 welfare agency shall maintain a record of each adoptive placement, out-of-home
5 care placement, and preadoptive placement made of an Indian child, evidencing the
6 efforts made to comply with the placement preference requirements specified in this
7 subsection, and shall make that record available at any time on the request of the
8 U.S. secretary of the interior or the Indian child's tribe.
9 **(8)** RETURN OF CUSTODY. (a) *Adoption vacated, set aside, or terminated.* 1. If
10 a final order granting adoption of an Indian child is vacated or set aside or if the
11 parental rights to an Indian child of all adoptive parents of the Indian child are
12 voluntarily terminated, the court that vacated or set aside the final decree of
13 adoption or that ordered the termination of parental rights of the adoptive parents
14 shall notify the Indian child's former parent and former Indian custodian and the
15 former parent or former Indian custodian may petition for the return of custody of
16 the Indian child.
17 2. On receipt of a petition under subd. 1., the court shall set a date for a hearing
18 on the petition that allows reasonable time for the parties to prepare. The court shall
19 provide notice of the hearing to the guardian and legal custodian of the Indian child,
20 to all other interested parties as provided in s. 48.27 (6), and to the Indian child's
21 former parent, former Indian custodian, and tribe in the manner specified in sub. (4)
22 (a). The hearing on the petition may not be held until at least 10 days after receipt
23 of the notice of the hearing by the Indian child's former parent, former Indian
24 custodian, and tribe or until at least 25 days after receipt of the notice of the hearing
25 by the U.S. secretary of the interior. On request of the Indian child's former parent,

former 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.

3. At the conclusion of the hearing, the court shall grant a petition for the return of custody of the Indian child to the Indian child's former parent or former Indian custodian unless there is a showing that return of custody is not in the best interests of the Indian child.

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

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

1. The name and tribal affiliation of the Indian child.

2. The names and addresses of the Indian child's birth parents.

3. The names and addresses of the Indian child's adoptive parents.

4. The identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child.

(b) *Confidentiality of parent's identity.* The court shall give the birth parent of an Indian child the opportunity to file an affidavit indicating that the birth parent

1 wishes the U.S. secretary of the interior to maintain the confidentiality of the birth
2 parent's identity. If the birth parent files that affidavit, the court shall include the
3 affidavit with the information provided to the U.S. secretary of the interior under
4 par. (a), and that secretary shall maintain the confidentiality of the birth parent's
5 identity as required under 25 USC 1951 (a) and (b).

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

11 **(10)** HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child
12 Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian child
13 custody proceeding governed by that act, except that in any case in which this
14 chapter provides a higher standard of protection for the rights of an Indian child's
15 parent or Indian custodian than the rights provided under that act, the court shall
16 apply the standard under this chapter.

17 **(11)** RULES. The department shall promulgate rules to implement and
18 administer this section and the federal Indian Child Welfare Act, 25 USC 1901 to
19 1963.

20 **SECTION 14.** 48.13 (intro.) of the statutes is amended to read:

21 **48.13 Jurisdiction over children alleged to be in need of protection or**
22 **services.** (intro.) ~~The~~ Except as provided in s. 48.028 (3), the court has exclusive
23 original jurisdiction over a child alleged to be in need of protection or services which
24 can be ordered by the court, and:

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

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

SECTION 16. 48.14 (12) of the statutes is created to read:

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

SECTION 17. 48.15 of the statutes is amended to read:

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

SECTION 18. 48.19 (2) of the statutes is amended to read:

48.19 **(2)** When a child is taken into physical custody ~~as provided in~~ under this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian ~~and~~, legal custodian, and Indian custodian of the child by the

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

SECTION 19. 48.195 (2) (d) 7. of the statutes is amended to read:

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

SECTION 20. 48.20 (2) (ag) of the statutes is amended to read:

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

SECTION 21. 48.20 (2) (b) of the statutes is amended to read:

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

SECTION 22. 48.20 (3) of the statutes is amended to read:

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

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

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

SECTION 24. 48.20 (7) (c) 1. of the statutes is amended to read:

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

SECTION 25. 48.20 (7) (d) of the statutes is amended to read:

48.20 **(7)** (d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian ~~and~~, legal custodian, and Indian

custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

SECTION 26. 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended to read:

48.20 **(8)** (a) If a child is held in custody, the intake worker shall notify the child's parent, guardian ~~and~~, legal custodian, and Indian custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian ~~and~~, legal custodian, and Indian custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, ~~and~~ the right to present and cross-examine witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian child, the right to counsel under s. 48.028 (4) (b). If the parent, guardian ~~or~~, legal custodian, or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian ~~or~~, legal custodian, or Indian custodian. The intake worker shall notify both the child and the child's parent, guardian ~~or~~, legal custodian~~. When~~, or Indian custodian.

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

expectant mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian and the unborn child, by the unborn child's guardian ad litem.

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

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

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

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

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

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

witnesses, and, in the case of a parent or Indian custodian of an Indian child, the right to counsel under s. 48.028 (4) (b).

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

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

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

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

SECTION 32. 48.21 (5) (d) 2. of the statutes is repealed.

SECTION 33. 48.21 (5) (d) 3. of the statutes is repealed.

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

48.23 **(2)** Whenever a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18

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

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

9 48.23 **(2g)** RIGHT OF INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.
10 Whenever an Indian child is the subject of a proceeding involving the removal of the
11 Indian child from his or her home, placement of the Indian child in an out-of-home
12 care placement or termination of parental rights to the Indian child, the Indian
13 child's parent or Indian custodian shall have the right to be represented by
14 court-appointed counsel as provided in sub. (4).

15 **SECTION 36.** 48.23 (4) of the statutes is amended to read:

16 48.23 **(4)** PROVIDING COUNSEL. ~~In any situation under this section in which~~ If
17 a child has a right to be represented by counsel or is provided counsel at the discretion
18 of the court under this section and counsel is not knowingly and voluntarily waived,
19 the court shall refer the child to the state public defender and counsel shall be
20 appointed by the state public defender under s. 977.08 without a determination of
21 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
22 state public defender shall appoint counsel within 24 hours after that referral. Any
23 counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
24 the child in any appeal brought under s. 809.105 unless the child requests
25 substitution of counsel or extenuating circumstances make it impossible for counsel

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

SECTION 37. 48.235 (4) (a) 7. of the statutes is amended to read:

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

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

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

SECTION 39. 48.255 (1) (cm) of the statutes is amended to read:

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

SECTION 40. 48.255 (1) (g) of the statutes is created to read:

48.255 **(1)** (g) If the child is or may be an Indian child, reliable and credible information showing that continued custody of the child by the child's parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and reliable and credible information showing that the person who took the child into custody and the intake worker have made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. If the child is or may be an Indian child and is being held in custody outside of his or her home, the petition shall set forth with specificity both the information required under this paragraph and the information required under par. (f).

SECTION 41. 48.255 (1m) (d) of the statutes is amended to read:

48.255 **(1m)** (d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963<u>, and, if the unborn child may be subject to that act, the name and address of the Indian tribe in which the unborn child may be eligible for affiliation when born, if known</u>.

SECTION 42. 48.255 (1m) (g) of the statutes is created to read:

48.255 **(1m)** (g) If the expectant mother is or may be an Indian child, reliable and credible information showing that continued custody of the child expectant mother by her parent or Indian custodian is likely to result in serious emotional or physical damage to the child expectant mother under s. 48.028 (4) (d) 1. and reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. If the child expectant mother is or may be an Indian child and is being held in custody outside of her home, the petition shall set forth with

specificity both the information required under this paragraph and the information required under par. (f).

SECTION 43. 48.255 (2) of the statutes is amended to read:

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

SECTION 44. 48.255 (4) of the statutes is amended to read:

48.255 **(4)** A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child's guardian ad litem or to the adult expectant mother, the unborn child through the unborn child's guardian ad litem and the physical custodian of the expectant mother, if any. ~~A~~ If the child is an Indian child or the unborn child may be an Indian child when born, a copy of a petition under sub. (1) or (1m) shall also be given to the ~~tribe or band with which the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian tribe with which the unborn child may be eligible for affiliation when born~~, if the child is an Indian child or the unborn child may be an Indian child when born~~.

SECTION 45. 48.27 (3) (a) 1. of the statutes is amended to read:

48.27 **(3)** (a) 1. If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall ~~also~~ notify, under s. 48.273, the child, any parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the unborn child by

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

SECTION 46. 48.27 (3) (d) of the statutes is amended to read:

48.27 **(3)** (d) If the petition that was filed relates to facts concerning a situation under s. 48.13 involving an Indian child or a situation under s. 48.133 ~~concerning~~ involving an unborn child who, when born, will be an Indian child, the court shall notify, under s. 48.273, the Indian child's Indian custodian and tribe or the Indian tribe ~~or band~~ with which the unborn child ~~will be affiliated~~ may be eligible for affiliation when born and that Indian custodian or tribe ~~or band~~ may~~, at the court's discretion,~~ intervene at any point in the proceeding ~~before the unborn child is born~~.

SECTION 47. 48.27 (4) (a) 2. of the statutes is amended to read:

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

SECTION 48. 48.273 (1) of the statutes is renumbered 48.273 (1) (a) and amended to read:

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

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

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

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

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

SECTION 49. 48.273 (1) (ag) of the statutes is created to read:

48.273 **(1)** (ag) Service of summons or notice required by s. 48.27 to an Indian child's parent, Indian custodian, or tribe, or to the Indian tribe in which an unborn

1 child who may be an Indian child when born may be eligible for affiliation when born,
2 shall be made as provided in s. 48.028 (4) (a).

3 **SECTION 50.** 48.273 (1) (c) 2. of the statutes is created to read:

4 48.273 **(1)** (c) 2. When a petition under s. 48.13 involves an Indian child and
5 the person to be notified is the Indian child's parent, Indian custodian, or tribe or
6 when a petition under s. 48.133 involves an unborn child who, when born, may be an
7 Indian child and the person to be notified is the child's expectant mother or the
8 Indian tribe with which the unborn child may be eligible for affiliation when born,
9 the mail shall be sent so that it is received by the person to be notified at least 10 days
10 before the time of the hearing or by the U.S. secretary of the interior at least 25 days
11 before the time of the hearing.

12 **SECTION 51.** 48.299 (6) (d) of the statutes is amended to read:

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

21 **SECTION 52.** 48.299 (9) of the statutes is created to read:

22 48.299 **(9)** If at any point in the proceeding the court determines that the child
23 is or may be an Indian child or that the unborn child, when born, may be an Indian
24 child, the court shall provide notice of the proceeding to the child's parent, Indian
25 custodian, and tribe, or to the expectant mother and the Indian tribe in which the

unborn child may be eligible for affiliation when born, in the manner specified in s. 48.028 (4) (a). The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or by the expectant mother and tribe or until at least 25 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, expectant mother, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

SECTION 53. 48.30 (1) of the statutes is amended to read:

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

SECTION 54. 48.30 (2) of the statutes is amended to read:

48.30 **(2)** At the commencement of the hearing under this section the child and the parent, guardian ~~or~~, legal custodian, or Indian custodian; the child expectant mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian, and the unborn child through the unborn child's guardian ad litem; or the adult expectant mother and the unborn child through the unborn child's guardian ad litem~~,~~; shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or ~~be~~ is waived. Nonpetitioning parties, including the child, shall be

granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

SECTION 55. 48.30 (6) (a) of the statutes is amended to read:

48.30 **(6)** (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

SECTION 56. 48.30 (7) of the statutes is amended to read:

48.30 **(7)** If the petition is contested, the court, subject to s. 48.299 (9), shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody.

SECTION 57. 48.305 of the statutes is amended to read:

48.305 Hearing upon the involuntary removal of a child or expectant mother. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact-finding hearing may

be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

SECTION 58. 48.31 (1) of the statutes is amended to read:

48.31 **(1)** In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence. In the case of a petition to terminate parental rights to an Indian child, "fact-finding hearing" means a hearing to determine if the allegations, other than the allegations under s. 48.42 (1) (f), are proved by clear and convincing evidence and if the allegations under s. 48.42 (1) (f) are proved beyond a reasonable doubt as provided in s. 48.028 (4) (e).

SECTION 59. 48.31 (7) (a) of the statutes is amended to read:

48.31 **(7)** (a) At the close of the fact-finding hearing, the court, subject to s. 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days after the fact-finding hearing for a child in secure custody and no more than 30 days after the fact-finding hearing for a child or expectant mother who is not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

SECTION 60. 48.315 (1) (j) of the statutes is created to read:

48.315 **(1)** (j) A reasonable period of delay, not to exceed 20 days, in a proceeding involving the out-of-home care placement of or termination of parental rights to a child who is or may be an Indian child, or involving an unborn child who, when born, may be an Indian child, resulting from a continuance granted at the request of the child's parent, Indian custodian, or tribe, or of the unborn child's expectant mother or the Indian tribe in which the unborn child may be eligible for affiliation when born, to enable the requester to prepare for the proceeding.