



2007 SENATE BILL 572

March 13, 2008 – Introduced by Senator JAUCH, cosponsored by Representatives MUSSER and SHERMAN. Referred to Committee on Tax Fairness and Family Prosperity.

1 **AN ACT** *to repeal* 48.01 (2), 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32
2 (1) (c) 3., 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3.,
3 48.365 (2m) (ad) 2., 48.415 (2) (a) 2., 48.685 (1) (br), 48.685 (1) (e), 48.983 (1) (d),
4 48.983 (1) (e), 48.983 (1) (h), 938.02 (18g), 938.21 (5) (d) 2., 938.21 (5) (d) 3.,
5 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d) (c) 2., 938.355 (2d) (c) 3., 938.357
6 (2v) (c) 2., 938.357 (2v) (c) 3., 938.365 (2m) (ad) 2. and 938.538 (6m) (a) 1.; **to**
7 **renumber** 48.01 (1), 48.01 (1) (h) and 938.02 (9m); **to renumber and amend**
8 48.20 (8), 48.21 (5) (d) 1., 48.273 (1), 48.32 (1) (c) 1., 48.355 (2d) (c) 1., 48.357 (1)
9 (am) 2., 48.357 (2m) (c), 48.357 (2v) (c) 1., 48.365 (2m) (ad) 1., 48.424 (1), 48.981
10 (1) (cs), 938.21 (5) (d) 1., 938.273 (1) (c), 938.32 (1) (d) 1., 938.355 (2d) (c) 1.,
11 938.357 (2m) (c), 938.357 (2v) (c) 1. and 938.365 (2m) (ad) 1.; **to amend** 48.02
12 (2), 48.02 (13), 48.02 (15), 48.13 (intro.), 48.14 (intro.), 48.15, 48.19 (2), 48.195
13 (2) (d) 7., 48.20 (2) (ag), 48.20 (2) (b), 48.20 (3), 48.20 (7) (c) (intro.), 48.20 (7) (c)
14 1., 48.20 (7) (d), 48.21 (3) (am), 48.21 (3) (b), 48.21 (3) (d), 48.21 (3) (e), 48.23 (2),

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1 48.23 (4), 48.235 (4) (a) 7., 48.235 (4m) (a) 7., 48.255 (1) (cm), 48.255 (1m) (d),
2 48.255 (2), 48.255 (4), 48.27 (3) (a) 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d),
3 48.30 (1), 48.30 (2), 48.30 (6) (a), 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315
4 (1m), 48.315 (2), 48.345 (3) (intro.), 48.355 (2) (d), 48.357 (1) (am) 1., 48.357 (1)
5 (am) 3., 48.357 (1) (c) 2., 48.357 (1) (c) 3., 48.357 (2m) (a), 48.357 (2m) (b), 48.363
6 (1) (a), 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a)
7 3., 48.365 (2m) (ag), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e), 48.38 (5m) (b), 48.38
8 (5m) (d), 48.38 (5m) (e), 48.415 (intro.), 48.42 (1) (d), 48.42 (2) (c), 48.42 (4) (a),
9 48.422 (1), 48.422 (2), 48.422 (6) (a), 48.422 (8), 48.423 (1), 48.424 (2) (intro.),
10 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.), 48.424 (4) (a), 48.424 (4) (b), 48.424
11 (5), 48.425 (1) (intro.), 48.428 (2) (a), 48.428 (2) (b), 48.43 (5) (c), 48.43 (5m),
12 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (3m) (intro.), 48.48 (8m), 48.485,
13 48.487 (2), 48.487 (3) (b), 48.487 (4m) (b) (intro.), 48.487 (4m) (c), 48.487 (4m)
14 (d), 48.563 (3), 48.565 (intro.), 48.57 (3p) (h) 2., 48.57 (3p) (h) 3. (intro.), 48.57
15 (3p) (h) 4., 48.57 (3t), 48.63 (1), 48.63 (4), 48.63 (5) (b), 48.63 (5) (c), 48.63 (5) (d)
16 3., 48.63 (5) (d) 4., 48.63 (5) (d) 5., 48.63 (5) (d) 6., 48.645 (1) (a), 48.645 (2) (a)
17 1., 48.645 (2) (a) 3., 48.645 (2) (a) 4., 48.645 (2) (b), 48.685 (5) (a), 48.685 (5d) (a)
18 (intro.), 48.685 (5d) (a) 2., 48.685 (5d) (a) 3., 48.685 (5d) (a) 3m., 48.685 (5d) (a)
19 4., 48.685 (5d) (b), 48.825 (1) (b), 48.83 (1), 48.831 (2), 48.833, 48.837 (4) (c),
20 48.837 (4) (d), 48.837 (6) (c), 48.85 (1), 48.88 (2) (a) (intro.), 48.88 (2) (b), 48.89
21 (1), 48.91 (3), 48.93 (1d), 48.977 (4) (a) 1., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.978
22 (2) (b) 11., 48.981 (1) (ct), 48.981 (1) (i), 48.981 (3) (bm) (intro.), 48.981 (3) (bm)
23 1., 48.981 (3) (bm) 2., 48.981 (3) (bm) 3., 48.981 (7) (a) 2., 48.981 (7) (a) 10m.,
24 48.981 (7) (a) 10r., 48.981 (7) (a) 11m., 48.981 (7) (am), 48.981 (8) (a), 48.983 (1)
25 (b) 1. b., 822.015, 938.02 (10m), 938.02 (12m), 938.02 (13), 938.02 (15), 938.13

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1 (intro.), 938.15, 938.185 (4) (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185
2 (4) (b), 938.19 (2), 938.20 (2) (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1.,
3 938.20 (7) (d), 938.20 (8) (a), 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag),
4 938.21 (3) (am), 938.21 (3) (b), 938.21 (3) (d), 938.21 (3) (e), 938.23 (4), 938.235
5 (4) (a) 7., 938.24 (2r) (title), 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r)
6 (a) 2., 938.24 (2r) (b), 938.243 (1) (e), 938.25 (2g) (title), 938.255 (1) (cm), 938.255
7 (1) (cr) 1. a., 938.255 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255
8 (2), 938.255 (4), 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b),
9 938.299 (6) (d), 938.299 (9) (title), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30
10 (6) (a), 938.30 (7), 938.305, 938.31 (7) (a), 938.315 (2), 938.355 (2) (d), 938.355
11 (6) (an) 1., 938.355 (6) (b), 938.355 (6m) (am) 1., 938.355 (6m) (c), 938.357 (1)
12 (am) 1., 938.357 (1) (am) 2., 938.357 (1) (am) 3., 938.357 (1) (c) 2., 938.357 (1)
13 (c) 3., 938.357 (2m) (a), 938.357 (2m) (b), 938.363 (1) (a), 938.363 (1) (b), 938.365
14 (1m), 938.365 (2), 938.365 (2m) (a) 1., 938.365 (2m) (a) 3., 938.365 (2m) (ag),
15 938.38 (3) (intro.), 938.38 (5) (b), 938.38 (5) (d), 938.38 (5) (e), 938.38 (5m) (b),
16 938.38 (5m) (d), 938.38 (5m) (e) and 938.538 (6m) (a) 4.; **to repeal and recreate**
17 48.028, 938.02 (15c) and 938.028; and **to create** 48.02 (8d), 48.02 (8m), 48.02
18 (8p), 48.02 (8r), 48.02 (15c), 48.02 (18j), 48.14 (12), 48.23 (2g), 48.255 (1) (g),
19 48.255 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299 (9), 48.315 (1) (j), 48.33
20 (4) (d), 48.335 (3j), 48.345 (3m), 48.355 (2) (b) 6v., 48.355 (2d) (d), 48.357 (1) (am)
21 1g., 48.357 (1) (am) 1m., 48.357 (1) (c) 1m., 48.357 (1) (c) 2m., 48.357 (2m) (am),
22 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b) 4., 48.38 (4) (i), 48.38 (4m),
23 48.38 (5) (bm), 48.38 (5) (c) 8., 48.38 (5m) (bm), 48.41 (2) (e), 48.417 (2) (cm),
24 48.42 (1) (e), 48.42 (1) (f), 48.42 (2g) (ag), 48.424 (1) (b), 48.424 (1) (c), 48.425 (1)
25 (cm), 48.427 (5), 48.427 (6) (b) 4., 48.43 (5) (bm), 48.831 (1r), 48.831 (4) (cm),

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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

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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

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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

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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

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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

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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.

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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.

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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

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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.

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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. For purposes of the application of s. 48.028
22 and the federal Indian Child Welfare Act, 26 USC 1901 to 1963, "parent" includes an
23 Indian person who has lawfully adopted an Indian child, including an adoption
24 under tribal law or custom, but does not include a parent by adoption who is not an
25 Indian person.

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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

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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

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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.

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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

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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.

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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

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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

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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.

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

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

8 2. The court or jury finds 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

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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

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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).

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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.

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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

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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 expert 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).

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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,

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

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

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

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

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

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

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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:

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1 **48.14 Jurisdiction over other matters relating to children.** (intro.) The
2 Except as provided in s. 48.028 (3), the court has exclusive jurisdiction over:

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

4 48.14 (12) Proceedings under s. 48.028 (8) for the return of custody of an Indian
5 child to his or her former parent, as defined in s. 48.028 (2) (c), or former Indian
6 custodian, as defined in s. 48.028 (2) (b), following a vacation or setting aside of an
7 order granting adoption of the Indian child or following an order voluntarily
8 terminating parental rights to an Indian child of all adoptive parents of the Indian
9 child.

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

11 **48.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
12 ~~contained in ss. 48.13, 48.133 and 48.14~~ Except as provided in s. 48.028 (3), nothing
13 in this chapter ~~deprives other courts~~ another court of the right to determine the legal
14 custody of ~~children~~ a child by habeas corpus or to determine the legal custody or
15 guardianship of ~~children~~ a child if the legal custody or guardianship is incidental to
16 the determination of causes an action pending in ~~the other courts.~~ But that court.
17 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise
18 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
19 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
20 children and their expectant mothers alleged to come within the provisions of ss.
21 48.133 and 48.14 (5).

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

23 48.19 (2) When a child is taken into physical custody ~~as provided in~~ under this
24 section, the person taking the child into custody shall immediately attempt to notify
25 the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the child by the

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

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

10 48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an
11 ~~American~~ Indian tribe ~~or band~~ to perform child welfare functions, that is exercising
12 jurisdiction over proceedings relating to the child, an attorney representing the
13 interests of the ~~American~~ Indian tribe ~~or band~~ in those proceedings, or an attorney
14 representing the interests of the child in those proceedings.

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

16 48.20 (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into
17 custody shall make every effort to release the child immediately to the child's parent,
18 guardian ~~or~~, legal custodian, or Indian custodian.

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

20 48.20 (2) (b) If the child's parent, guardian ~~or~~, legal custodian, or Indian
21 custodian is unavailable, unwilling, or unable to provide supervision for the child,
22 the person who took the child into custody may release the child to a responsible
23 adult after counseling or warning the child as may be appropriate.

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

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1 48.20 (3) If the child is released under sub. (2) (b) to (d), the person who took
2 the child into custody shall immediately notify the child's parent, guardian and, legal
3 custodian, and Indian custodian of the time and circumstances of the release and the
4 person, if any, to whom the child was released. If the child is not released under sub.
5 (2), the person who took the child into custody shall arrange in a manner determined
6 by the court and law enforcement agencies for the child to be interviewed by the
7 intake worker under s. 48.067 (2), ~~and. The person who took the child into custody~~
8 shall make a statement in writing with supporting facts of the reasons why the child
9 was taken into physical custody and shall give ~~any child 12 years of age or older~~ a
10 copy of the statement ~~in addition to giving a copy to the intake worker. When and~~
11 to any child 12 years of age or older. If the intake interview is not done in person, the
12 report may be read to the intake worker.

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

14 48.20 (7) (c) (intro.) The intake worker may release the child as follows:

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

16 48.20 (7) (c) 1. To a parent, guardian ~~or~~, legal custodian, or Indian custodian,
17 or, to a responsible adult if the parent, guardian ~~or~~, legal custodian, or Indian
18 custodian is unavailable, unwilling, or unable to provide supervision for the child,
19 ~~release the child to a responsible adult,~~ counseling or warning the child as may be
20 appropriate; or, if a the child is 15 years of age or older, ~~release the child~~ without
21 immediate adult supervision, counseling or warning the child as may be appropriate;
22 ~~or.~~

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

24 48.20 (7) (d) If the child is released from custody, the intake worker shall
25 immediately notify the child's parent, guardian and, legal custodian, and Indian

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

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

5 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
6 child's parent, guardian ~~and~~, legal custodian, and Indian custodian of the reasons for
7 holding the child in custody and of the child's whereabouts unless there is reason to
8 believe that notice would present imminent danger to the child. The parent,
9 guardian ~~and~~, legal custodian, and Indian custodian shall also be notified of the time
10 and place of the detention hearing required under s. 48.21, the nature and possible
11 consequences of that hearing, ~~and~~ the right to present and cross-examine witnesses
12 at the hearing, and, in the case of a parent or Indian custodian of an Indian child, the
13 right to counsel under s. 48.028 (4) (b). If the parent, guardian ~~or~~, legal custodian,
14 or Indian custodian is not immediately available, the intake worker or another
15 person designated by the court shall provide notice as soon as possible. When the
16 child is 12 years of age or older, the child shall receive the same notice about the
17 detention hearing as the parent, guardian ~~or~~, legal custodian, or Indian custodian.
18 The intake worker shall notify both the child and the child's parent, guardian ~~or~~,
19 legal custodian. ~~When, or Indian custodian.~~

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

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

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

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

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

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

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

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

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

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

4 48.21 (3) (e) If the parent, guardian ~~or~~, legal custodian, Indian custodian, or the
5 child is not represented by counsel at the hearing and the child is continued in
6 custody as a result of the hearing, the parent, guardian, legal custodian, Indian
7 custodian, or child may request through counsel subsequently appointed or retained
8 or through a guardian ad litem that the order to hold the child in custody be reheard.
9 If the request is made, a rehearing shall take place as soon as possible. ~~Any~~ An order
10 to hold the child in custody shall be ~~subject to rehearing~~ reheard for good cause,
11 whether or not counsel was present.

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

14 48.21 (5) (d) If the judge or circuit court commissioner finds that any of the
15 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
16 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
17 within 30 days after the date of that finding to determine the permanency plan for
18 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
19 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
20 ~~than 5 days before the date of the hearing.~~

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

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

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

24 48.23 (2) Whenever a child is the subject of a proceeding involving a contested
25 adoption or the involuntary termination of parental rights, any parent under 18

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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

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

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

14 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
15 under s. 48.028 or 48.46.

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

17 48.235 (4m) (a) 7. Petition for relief from a judgment terminating parental
18 rights under s. 48.028 or 48.46 after the child is born.

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

20 48.255 (1) (cm) Whether the child may be subject to the federal Indian child
21 welfare act Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject
22 to that act, the names and addresses of the child's Indian custodian, if any, and
23 Indian tribe, if known.

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

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

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

12 48.255 (1m) (d) Whether the unborn child, when born, may be subject to the
13 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the unborn child may
14 be subject to that act, the name and address of the Indian tribe in which the unborn
15 child may be eligible for affiliation when born, if known.

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

17 48.255 (1m) (g) If the expectant mother is or may be an Indian child, reliable
18 and credible information showing that continued custody of the child expectant
19 mother by her parent or Indian custodian is likely to result in serious emotional or
20 physical damage to the child expectant mother under s. 48.028 (4) (d) 1. and reliable
21 and credible information showing that the person who took the child expectant
22 mother into custody and the intake worker have made active efforts under s. 48.028
23 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have
24 proved unsuccessful. If the child expectant mother is or may be an Indian child and
25 is being held in custody outside of her home, the petition shall set forth with

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

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

4 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) ~~and, (f), and (g)~~
5 or (1m) (a) to (d) ~~and, (f), and (g)~~ are not known or cannot be ascertained by the
6 petitioner, the petition shall so state.

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

8 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
9 child is 12 years of age or over and to the parents, guardian, legal custodian and
10 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
11 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
12 and physical custodian and the unborn child by the unborn child's guardian ad litem
13 or to the adult expectant mother, the unborn child through the unborn child's
14 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A~~ If
15 the child is an Indian child or the unborn child may be an Indian child when born,
16 a copy of a petition under sub. (1) or (1m) shall also be given to the ~~tribe or band with~~
17 ~~which the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian
18 tribe with which the unborn child may be eligible for affiliation when born, ~~if the~~
19 ~~child is an Indian child or the unborn child may be an Indian child when born.~~

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

21 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
22 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
23 who is a child, the court shall ~~also~~ notify, under s. 48.273, the child, any parent,
24 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
25 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by

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

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

13 48.27 (3) (d) If the petition that was filed relates to facts concerning a situation
14 under s. 48.13 involving an Indian child or a situation under s. 48.133 concerning
15 involving an unborn child who, when born, will be an Indian child, the court shall
16 notify, under s. 48.273, the Indian child's Indian custodian and tribe or the Indian
17 tribe or band with which the unborn child will be affiliated may be eligible for
18 affiliation when born and that Indian custodian or tribe or band may, at the court's
19 discretion, intervene at any point in the proceeding ~~before the unborn child is born.~~

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

21 48.27 (4) (a) 2. Advise the child and any party, if applicable, of his or her right
22 to legal counsel regardless of ability to pay.

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

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

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

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

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

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

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

23 48.273 (1) (ag) Service of summons or notice required by s. 48.27 to an Indian
24 child's parent, Indian custodian, or tribe, or to the Indian tribe in which an unborn

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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 or
18 if the court determines that the paternity proceedings may result in a finding that
19 the child is an Indian child and in a petition by the child's parent, Indian custodian,
20 or tribe for transfer of the proceeding to the jurisdiction of the tribe.

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

SENATE BILL 572**SECTION 52**

1 unborn child may be eligible for affiliation when born, in the manner specified in s.
2 48.028 (4) (a). The next hearing in the proceeding may not be held until at least 10
3 days after receipt of the notice by the parent, Indian custodian, and tribe or by the
4 expectant mother and tribe or until at least 25 days after receipt of the notice by the
5 U.S. secretary of the interior. On request of the parent, Indian custodian, expectant
6 mother, or tribe, the court shall grant a continuance of up to 20 additional days to
7 enable the requester to prepare for that hearing.

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

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

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

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

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

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

4 48.30 (6) (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall
5 set a date for the dispositional hearing which allows reasonable time for the parties
6 to prepare but is no more than 10 days after the plea hearing for a child who is held
7 in secure custody and no more than 30 days after the plea hearing for a child or an
8 expectant mother who is not held in secure custody. If all parties consent the court
9 may proceed immediately with the dispositional hearing.

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

11 48.30 (7) If the petition is contested, the court, subject to s. 48.299 (9), shall set
12 a date for the fact-finding hearing which allows reasonable time for the parties to
13 prepare but is no more than 20 days after the plea hearing for a child who is held in
14 secure custody and no more than 30 days after the plea hearing for a child or an
15 expectant mother who is not held in secure custody.

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

17 **48.305 Hearing upon the involuntary removal of a child or expectant**
18 **mother.** Notwithstanding other time periods for hearings under this chapter, if a
19 child is removed from the physical custody of the child's parent or guardian under
20 s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or
21 if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2.
22 without the consent of the expectant mother, the court, subject to s. 48.299 (9), shall
23 schedule a plea hearing and fact-finding hearing within 30 days after a request from
24 the parent or guardian from whom custody was removed or from the adult expectant
25 mother who was taken into custody. The plea hearing and fact-finding hearing may

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

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

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

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

12 48.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
13 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable
14 time for the parties to prepare but is no more than 10 days after the fact-finding
15 hearing for a child in secure custody and no more than 30 days after the fact-finding
16 hearing for a child or expectant mother who is not held in secure custody. If all parties
17 consent, the court may immediately proceed with a dispositional hearing.

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

19 48.315 (1) (j) A reasonable period of delay, not to exceed 20 days, in a proceeding
20 involving the out-of-home care placement of or termination of parental rights to a
21 child who is or may be an Indian child, or involving an unborn child who, when born,
22 may be an Indian child, resulting from a continuance granted at the request of the
23 child’s parent, Indian custodian, or tribe, or of the unborn child’s expectant mother
24 or the Indian tribe in which the unborn child may be eligible for affiliation when born,
25 to enable the requester to prepare for the proceeding.

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1 **SECTION 61.** 48.315 (1m) of the statutes is amended to read:

2 48.315 **(1m)** Subsection (1) (a), (d), (e) ~~and, (fm), (g), and (j)~~ does not apply to
3 proceedings under s. 48.375 (7).

4 **SECTION 62.** 48.315 (2) of the statutes is amended to read:

5 48.315 **(2)** A continuance shall be granted by the court only upon a showing of
6 good cause in open court or during a telephone conference under s. 807.13 on the
7 record and only for so long as is necessary, taking into account the request or consent
8 of the district attorney or the parties, the request of a person specified in sub. (1) (j),
9 and the interest of the public in the prompt disposition of cases.

10 **SECTION 63.** 48.32 (1) (c) 1. of the statutes is renumbered 48.32 (1) (c) and
11 amended to read:

12 48.32 **(1) (c)** If the judge or circuit court commissioner finds that any of the
13 circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent,
14 the judge or circuit court commissioner shall hold a hearing under s. 48.38 (4m)
15 within 30 days after the date of that finding to determine the permanency plan for
16 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
17 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
18 ~~than 5 days before the date of the hearing.~~

19 **SECTION 64.** 48.32 (1) (c) 2. of the statutes is repealed.

20 **SECTION 65.** 48.32 (1) (c) 3. of the statutes is repealed.

21 **SECTION 66.** 48.33 (4) (d) of the statutes is created to read:

22 48.33 **(4) (d)** If the agency knows or has reason to know that the child is an
23 Indian child, a description of any efforts undertaken to determine whether the child
24 is an Indian child; specific information showing that continued custody of the child
25 by the parent or Indian custodian is likely to result in serious emotional or physical

SENATE BILL 572**SECTION 66**

1 damage to the child under s. 48.028 (4) (d) 1.; specific information showing that the
2 county department, department in a county having a population of 500,000 or more,
3 or agency primarily responsible for providing services to the child has made active
4 efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that
5 those efforts have proved unsuccessful; a statement as to whether the out-of-home
6 care placement recommended is in compliance with the order of placement
7 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c); and, if the
8 recommended placement is not in compliance with that order, specific information
9 showing good cause, as described in s. 48.028 (7) (e), for departing from that order.

10 **SECTION 67.** 48.335 (3j) of the statutes is created to read:

11 48.335 (3j) At hearings under this section involving an Indian child, if the
12 agency, as defined in s. 48.38 (1) (a), is recommending placement of the Indian child
13 in a foster home, treatment foster home, group home, or residential care center for
14 children and youth or in the home of a relative other than a parent, the agency shall
15 present as evidence specific information showing all of the following:

16 (a) That continued custody of the Indian child by the parent or Indian custodian
17 is likely to result in serious emotional or physical damage to the Indian child under
18 s. 48.028 (4) (d) 1.

19 (b) That the county department, the department in a county having a
20 population of 500,000 or more, or the agency primarily responsible for providing
21 services to the Indian child has made active efforts under s. 48.028 (4) (d) 2. to
22 prevent the breakup of the Indian family and that those efforts have proved
23 unsuccessful.

24 (c) That the placement recommended is in compliance with the order of
25 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) or, if that

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1 placement is not in compliance with that order, good cause, as described in s. 48.028
2 (7) (e), for departing from that order.

3 **SECTION 68.** 48.345 (3) (intro.) of the statutes is amended to read:

4 48.345 (3) (intro.) ~~Designate Subject to sub. (3m), designate~~ one of the following
5 as the placement for the child:

6 **SECTION 69.** 48.345 (3m) of the statutes is created to read:

7 48.345 (3m) Subject to s. 48.028 (7) (c), if the child is an Indian child who is
8 being placed in an out-of-home care placement, as defined in s. 48.028 (2) (e),
9 designate one of the placements listed in s. 48.028 (7) (b) 1. to 4. as the placement for
10 the Indian child, in the order of preference listed, unless the court finds good cause,
11 as described in s. 48.028 (7) (e), for departing from that order.

12 **SECTION 70.** 48.355 (2) (b) 6v. of the statutes is created to read:

13 48.355 (2) (b) 6v. If the child is an Indian child who is placed outside the home,
14 a finding supported by clear and convincing evidence, including the testimony of one
15 or more qualified expert witnesses, that continued custody of the Indian child by the
16 parent or Indian custodian is likely to result in serious emotional or physical damage
17 to the child under s. 48.028 (4) (d) 1. and a finding supported by clear and convincing
18 evidence as to whether the county department, department in a county having a
19 population of 500,000 or more, or agency primarily responsible for providing services
20 under a court order has made active efforts under s. 48.028 (4) (d) 2. to prevent the
21 breakup of the Indian family and that those efforts have proved unsuccessful. The
22 findings under this subdivision shall be in addition to the findings under subd. 6.,
23 except that for the sole purpose of determining whether the cost of providing care for
24 an Indian child is eligible for reimbursement under 42 USC 670 to 679b, the findings

SENATE BILL 572**SECTION 70**

1 under this subdivision and the findings under subd. 6. shall be considered to be the
2 same findings.

3 **SECTION 71.** 48.355 (2) (d) of the statutes is amended to read:

4 48.355 (2) (d) The court shall provide a copy of a dispositional order relating
5 to a child in need of protection or services to the child's parent, guardian, legal
6 custodian, or trustee, to the child through the child's counsel or guardian ad litem
7 and, to the child's court-appointed special advocate, and, if the child is an Indian
8 child, to the Indian child's Indian custodian and tribe. The court shall provide a copy
9 of a dispositional order relating to an unborn child in need of protection or services
10 to the expectant mother, to the unborn child through the unborn child's guardian ad
11 litem and, if the expectant mother is a child, to her, to the parent, guardian, legal
12 custodian, or trustee of a child expectant mother, and, if the expectant mother is an
13 Indian child or if the unborn child when born may be an Indian child, to the expectant
14 mother's Indian custodian and tribe or to the Indian tribe in which the unborn child
15 may be eligible for affiliation when born.

16 **SECTION 72.** 48.355 (2d) (c) 1. of the statutes is renumbered 48.355 (2d) (c) and
17 amended to read:

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

24 **SECTION 73.** 48.355 (2d) (c) 2. of the statutes is repealed.

25 **SECTION 74.** 48.355 (2d) (c) 3. of the statutes is repealed.

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1 **SECTION 75.** 48.355 (2d) (d) of the statutes is created to read:

2 48.355 **(2d)** (d) This subsection does not affect the requirement under sub. (2)
3 (b) 6v. that the court include in a dispositional order placing an Indian child outside
4 the home a finding as to whether the county department, department in a county
5 having a population of 500,000 or more, or agency primarily responsible for providing
6 services under a court order has made active efforts under s. 48.028 (4) (d) 2. to
7 prevent the breakup of the Indian family and that those efforts have proved
8 unsuccessful.

9 **SECTION 76.** 48.357 (1) (am) 1. of the statutes is amended to read:

10 48.357 **(1)** (am) 1. If the proposed change in placement involves any change in
11 placement other than a change in placement specified in par. (c), the person or agency
12 primarily responsible for implementing the dispositional order, the district attorney,
13 or the corporation counsel shall cause written notice of the proposed change in
14 placement to be sent to the child, the parent, guardian, and legal custodian of the
15 child, any foster parent, treatment foster parent, or other physical custodian
16 described in s. 48.62 (2) of the child, the child's court-appointed special advocate,
17 and, if the child is an Indian child, the Indian child's Indian custodian and tribe. If
18 the child is the expectant mother of an unborn child under s. 48.133, written notice
19 shall also be sent to the unborn child by the unborn child's guardian ad litem. If the
20 change in placement involves an adult expectant mother is an adult of an unborn
21 child under s. 48.133, written notice shall be sent to the adult expectant mother and
22 the unborn child by the unborn child's guardian ad litem. The notice shall contain
23 the name and address of the new placement, the reasons for the change in placement,
24 a statement describing why the new placement is preferable to the present

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1 placement, and a statement of how the new placement satisfies objectives of the
2 treatment plan ordered by the court.

3 **SECTION 77.** 48.357 (1) (am) 1g. of the statutes is created to read:

4 48.357 (1) (am) 1g. If the child is an Indian child and if the proposed change
5 in placement would change the Indian child's placement from a placement outside
6 the home to another placement outside the home, a notice under subd. 1. shall also
7 contain a statement as to whether the new placement is in compliance with the order
8 of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and,
9 if the new placement is not in compliance with that order, specific information
10 showing good cause, as described in s. 48.028 (7) (e), for departing from that order.

11 **SECTION 78.** 48.357 (1) (am) 1m. of the statutes is created to read:

12 48.357 (1) (am) 1m. If the child is an Indian child, notice under subd. 1. to the
13 Indian child's parent, Indian custodian, and tribe shall be provided in the manner
14 specified in s. 48.028 (4) (a). No hearing on the request may be held until at least 10
15 days after receipt of the notice by the Indian child's parent, Indian custodian, and
16 tribe or until at least 25 days after receipt of the notice by the U.S. secretary of the
17 interior. On request of the Indian child's parent, Indian custodian, or tribe, the court
18 shall grant a continuance of up to 20 additional days to enable the requester to
19 prepare for the hearing.

20 **SECTION 79.** 48.357 (1) (am) 2. of the statutes is renumbered 48.357 (1) (am)
21 2. (intro.) and amended to read:

22 48.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
23 a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special
24 advocate, may obtain a hearing on the matter by filing an objection with the court
25 within 10 days after receipt of the notice. Placements Except as provided in subd.

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1 2m., placements may not be changed until 10 days after that notice is sent to the
2 court unless written waivers of objection are signed as follows:

3 a. By the parent, guardian, or legal custodian and, or Indian custodian, the
4 child, if 12 years of age or over, or and the child's tribe, if the child is an Indian child.

5 b. By the child expectant mother, if 12 years of age or over, her parent, guardian,
6 or legal custodian and, or Indian custodian, the unborn child by the unborn child's
7 guardian ad litem, or and the child expectant mother's tribe, if she is an Indian child.

8 c. By the adult expectant mother and the unborn child by the unborn child's
9 guardian ad litem, sign written waivers of objection, except that changes.

10 2m. Changes in placement that were authorized in the dispositional order may
11 be made immediately if notice is given as required under subd. 1. In addition, a
12 hearing is not required for placement changes authorized in the dispositional order
13 except when an objection filed by a person who received notice alleges that new
14 information is available that affects the advisability of the court's dispositional order.

15 **SECTION 80.** 48.357 (1) (am) 3. of the statutes, as affected by 2007 Wisconsin
16 Act 20, is amended to read:

17 48.357 (1) (am) 3. If the court changes the child's placement from a placement
18 outside the home to another placement outside the home, the change in placement
19 order shall contain the applicable order ~~specified in~~ under sub. (2v) (a) 1m. and the
20 applicable statement ~~specified in~~ under sub. (2v) (a) 2. If the court changes the
21 placement of an Indian child from a placement outside the home to another
22 placement outside the home, the change in placement order shall, in addition,
23 comply with the order of placement preference under s. 48.028 (7) (b) or, if applicable,
24 s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e),
25 for departing from that order.

SENATE BILL 572**SECTION 81**

1 **SECTION 81.** 48.357 (1) (c) 1m. of the statutes is created to read:

2 48.357 (1) (c) 1m. If the child is an Indian child, a request under subd. 1. shall
3 also contain specific information showing that continued custody of the Indian child
4 by the parent or Indian custodian is likely to result in serious emotional or physical
5 damage to the child under s. 48.028 (4) (d) 1., specific information showing that the
6 agency primarily responsible for implementing the dispositional order has made
7 active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family
8 and that those efforts have proved unsuccessful, a statement as to whether the new
9 placement is in compliance with the order of placement preference under s. 48.028
10 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance
11 with that order, specific information showing good cause, as described in s. 48.028
12 (7) (e), for departing from that order.

13 **SECTION 82.** 48.357 (1) (c) 2. of the statutes is amended to read:

14 48.357 (1) (c) 2. The court shall hold a hearing prior to ordering any change in
15 placement requested under subd. 1. Not less than 3 days prior to the hearing, the
16 court shall provide notice of the hearing, together with a copy of the request for the
17 change in placement, to the child, the parent, guardian, and legal custodian of the
18 child, the child’s court-appointed special advocate, and all parties that are bound by
19 the dispositional order, and, if the child is an Indian child, the Indian child’s Indian
20 custodian and tribe. If all parties consent, the court may proceed immediately with
21 the hearing.

22 **SECTION 83.** 48.357 (1) (c) 2m. of the statutes is created to read:

23 48.357 (1) (c) 2m. If the child is an Indian child, notice under subd. 2. to the
24 Indian child’s parent, Indian custodian, and tribe shall be provided in the manner
25 specified in s. 48.028 (4) (a). No hearing on the request may be held until at least 10

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1 days after receipt of the notice by the Indian child's parent, Indian custodian, and
2 tribe or until at least 25 days after receipt of the notice by the U.S. secretary of the
3 interior. On request of the Indian child's parent, Indian custodian, or tribe, the court
4 shall grant a continuance of up to 20 additional days to enable the requester to
5 prepare for the hearing.

6 **SECTION 84.** 48.357 (1) (c) 3. of the statutes, as affected by 2007 Wisconsin Act
7 20, is amended to read:

8 48.357 (1) (c) 3. If the court changes the child's placement from a placement in
9 the child's home to a placement outside the child's home, the change in placement
10 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., the applicable order
11 ~~specified in~~ under sub. (2v) (a) 1m., the applicable statement ~~specified in~~ under sub.
12 (2v) (a) 2., and, if in addition the court finds that any of the circumstances ~~specified~~
13 ~~in~~ under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination
14 ~~specified in~~ under sub. (2v) (a) 3. If the court changes the placement of an Indian
15 child from a placement in the Indian child's home to a placement outside the Indian
16 child's home, the change in placement order shall, in addition, contain the findings
17 under sub. (2v) (a) 4. and comply with the order of placement preference under s.
18 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as
19 described in s. 48.028 (7) (e), for departing from the order.

20 **SECTION 85.** 48.357 (2m) (a) of the statutes is amended to read:

21 48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian
22 custodian of the child, the expectant mother, the unborn child by the unborn child's
23 guardian ad litem, or any person or agency primarily bound by the dispositional
24 order, other than the person or agency responsible for implementing the order, may
25 request a change in placement under this paragraph. The request shall contain the

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1 name and address of the new placement requested and shall state what new
2 information is available that affects the advisability of the current placement. If the
3 proposed change in placement would change the placement of a child placed in the
4 child's home to a placement outside the child's home, the request shall also contain
5 specific information showing that continued placement of the child in the home
6 would be contrary to the welfare of the child and, unless any of the circumstances
7 specified in under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that
8 the agency primarily responsible for implementing the dispositional order has made
9 reasonable efforts to prevent the removal of the child from the home, while assuring
10 that the child's health and safety are the paramount concerns. The request shall be
11 submitted to the court. ~~In addition, the~~ The court may also propose a change in
12 placement on its own motion.

13 **SECTION 86.** 48.357 (2m) (am) of the statutes is created to read:

14 48.357 **(2m)** (am) 1. If the proposed change of placement would change the
15 placement of an Indian child placed in the Indian child's home to a placement outside
16 the Indian child's home, a request under par. (a) shall also contain specific
17 information showing that continued custody of the Indian child by the parent or
18 Indian custodian is likely to result in serious emotional or physical damage to the
19 child under s. 48.028 (4) (d) 1., specific information showing that the agency
20 primarily responsible for implementing the dispositional order has made active
21 efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that
22 those efforts have proved unsuccessful, a statement as to whether the new placement
23 is in compliance with the order of placement preference under s. 48.028 (7) (b) or, if
24 applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance with that

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1 order, specific information showing good cause, as described in s. 48.028 (7) (e), for
2 departing from that order.

3 2. If the proposed change in placement would change the placement of an
4 Indian child placed outside the home to another placement outside the home, a
5 request under par. (a) shall also contain a statement as to whether the new
6 placement is in compliance with the order of placement preference under s. 48.028
7 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if the new placement is not in compliance
8 with that order, specific information showing good cause, as described in s. 48.028
9 (7) (e), for departing from that order.

10 **SECTION 87.** 48.357 (2m) (b) of the statutes is amended to read:

11 48.357 (2m) (b) The court shall hold a hearing ~~on the matter~~ prior to ordering
12 any change in placement requested or proposed under par. (a) if the request states
13 that new information is available that affects the advisability of the current
14 placement, ~~unless.~~ A hearing is not required if the requested or proposed change in
15 placement involves ~~any change in placement other than~~ does not involve a change
16 in placement of a child placed in the child's home to a placement outside the child's
17 home ~~and,~~ written waivers of objection to the proposed change in placement are
18 signed by all persons entitled to receive notice under sub. (1) ~~(am) 1.~~ this paragraph,
19 other than a court-appointed special advocate, and the court approves. If a hearing
20 is scheduled, not less than 3 days before the hearing the court shall notify the child,
21 the parent, guardian, and legal custodian of the child, any foster parent, treatment
22 foster parent, or other physical custodian described in s. 48.62 (2) of the child, the
23 child's court-appointed special advocate, all parties who are bound by the
24 dispositional order, and, if the child is an Indian child, the Indian child's Indian
25 custodian and tribe. If the child is the expectant mother of an unborn child under

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1 s. 48.133, the court shall also notify the unborn child by the unborn child's guardian
2 ad litem, ~~or. If the change in placement involves an adult expectant mother of an~~
3 unborn child under s. 48.133, the court shall notify the adult expectant mother, the
4 unborn child by the unborn child's guardian ad litem, and all parties who are bound
5 by the dispositional order, at least 3 days prior to the hearing. A copy of the request
6 or proposal for the change in placement shall be attached to the notice. If all of the
7 parties consent, the court may proceed immediately with the hearing.

8 **SECTION 88.** 48.357 (2m) (bm) of the statutes is created to read:

9 48.357 **(2m)** (bm) If the child is an Indian child, notice under par. (b) to the
10 Indian child's parent, Indian custodian, and tribe shall be provided in the manner
11 specified in s. 48.028 (4) (a). No hearing on the request or proposal may be held until
12 at least 10 days after receipt of the notice by the Indian child's parent, Indian
13 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
14 secretary of the interior. On request of the Indian child's parent, Indian custodian,
15 or tribe, the court shall grant a continuance of up to 20 additional days to enable the
16 requester to prepare for the hearing.

17 **SECTION 89.** 48.357 (2m) (c) of the statutes, as affected by 2007 Wisconsin Act
18 20, is renumbered 48.357 (2m) (c) 1. and amended to read:

19 48.357 **(2m)** (c) 1. If the court changes the child's placement from a placement
20 in the child's home to a placement outside the child's home, the change in placement
21 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., the applicable order
22 ~~specified in~~ under sub. (2v) (a) 1m., the applicable statement ~~specified in~~ under sub.
23 (2v) (a) 2., and, if in addition the court finds that any of the circumstances ~~specified~~
24 in under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination
25 ~~specified in~~ under sub. (2v) (a) 3. If the court changes the placement of an Indian

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1 child from a placement in the Indian child's home to a placement outside the Indian
2 child's home, the change in placement order shall, in addition, contain the findings
3 under sub. (2v) (a) 4. and comply with the order of placement preference under s.
4 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as
5 described in s. 48.028 (7) (e), for departing from that order.

6 2. If the court changes the child's placement from a placement outside the home
7 to another placement outside the home, the change in placement order shall contain
8 the applicable order specified in under sub. (2v) (a) 1m. and the applicable statement
9 specified in under sub. (2v) (a) 2. If the court changes the placement of an Indian
10 child from a placement outside the Indian child's home to another placement outside
11 the Indian child's home, the change in placement order shall, in addition, comply
12 with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s.
13 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for
14 departing from that order.

15 **SECTION 90.** 48.357 (2v) (a) 4. of the statutes is created to read:

16 48.357 (2v) (a) 4. If the change in placement order changes an Indian child's
17 placement from a placement in the Indian child's home to a placement outside the
18 Indian child's home, a finding supported by clear and convincing evidence, including
19 the testimony of one or more qualified expert witnesses, that continued custody of
20 the Indian child by the parent or Indian custodian is likely to result in serious
21 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and a finding
22 supported by clear and convincing evidence that the agency primarily responsible for
23 implementing the dispositional order has made active efforts under s. 48.028 (4) (d)
24 2. to prevent the breakup of the Indian family and that those efforts have proved
25 unsuccessful. The findings under this subdivision shall be in addition to the findings

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1 under subd. 1., except that for the sole purpose of determining whether the cost of
2 providing care for an Indian child is eligible for reimbursement under 42 USC 670
3 to 679b, the findings under this subdivision and the findings under subd. 1. shall be
4 considered to be the same findings.

5 **SECTION 91.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
6 amended to read:

7 48.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
8 specified in under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court
9 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding
10 to determine the permanency plan for the child. ~~If a hearing is held under this~~
11 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
12 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

13 **SECTION 92.** 48.357 (2v) (c) 2. of the statutes is repealed.

14 **SECTION 93.** 48.357 (2v) (c) 3. of the statutes is repealed.

15 **SECTION 94.** 48.363 (1) (a) of the statutes is amended to read:

16 48.363 (1) (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian
17 custodian, an expectant mother, an unborn child by the unborn child's guardian ad
18 litem, any person or agency bound by a dispositional order, or the district attorney
19 or corporation counsel in the county in which the dispositional order was entered
20 may request a revision in the order that does not involve a change in placement,
21 including a revision with respect to the amount of child support to be paid by a
22 parent, ~~or the.~~ The court may ~~on its own motion~~ also propose such a revision. The
23 request or court proposal shall set forth in detail the nature of the proposed revision
24 and what new information is available that affects the advisability of the court's
25 disposition. The request or court proposal shall be submitted to the court. The court

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1 shall hold a hearing on the matter prior to any revision of the dispositional order if
2 the request or court proposal indicates that new information is available which
3 affects the advisability of the court's dispositional order, unless written waivers of
4 objections to the revision are signed by all parties entitled to receive notice and the
5 court approves.

6 **SECTION 95.** 48.363 (1) (b) of the statutes is amended to read:

7 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
8 shall notify the child, the child's parent, guardian, and legal custodian, all parties
9 bound by the dispositional order, the child's foster parent, treatment foster parent,
10 or other physical custodian described in s. 48.62 (2), the child's court-appointed
11 special advocate, the district attorney or corporation counsel in the county in which
12 the dispositional order was entered, and, if the child is an Indian child, the Indian
13 child's Indian custodian and tribe. If the child is the expectant mother of an unborn
14 child under s. 48.133, the court shall also notify the unborn child by the unborn
15 child's guardian ad litem; or, If the proceeding involves an adult expectant mother
16 of an unborn child under s. 48.133, the court shall notify the adult expectant mother,
17 the unborn child through the unborn child's guardian ad litem, all parties bound by
18 the dispositional order, and the district attorney or corporation counsel in the county
19 in which the dispositional order was entered, at least 3 days prior to the hearing. A
20 copy of the request or proposal shall be attached to the notice. If all parties consent,
21 the court may proceed immediately with the hearing. No revision may extend the
22 effective period of the original order.

23 **SECTION 96.** 48.365 (1m) of the statutes is amended to read:

24 48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian,
25 expectant mother, unborn child by the unborn child's guardian ad litem, any person

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1 or agency bound by the dispositional order, the district attorney or corporation
2 counsel in the county in which the dispositional order was entered, or the court on
3 its own motion, may request an extension of an order under s. 48.355 including an
4 order under s. 48.355 that was entered before the child was born. The request shall
5 be submitted to the court ~~which~~ that entered the order. ~~No~~ An order under s. 48.355
6 may be extended ~~except~~ only as provided in this section.

7 **SECTION 97.** 48.365 (2) of the statutes is amended to read:

8 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~
9 provide notice of the time and place of the hearing to the child, the child's parent,
10 guardian, and legal custodian, all the parties present at the original hearing, the
11 child's foster parent, treatment foster parent or other physical custodian described
12 in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or
13 corporation counsel in the county in which the dispositional order was entered and,
14 if the child is an Indian child, the Indian child's Indian custodian and tribe. If the
15 child is an expectant mother of an unborn child under s. 48.133, the court shall also
16 notify the unborn child by the unborn child's guardian ad litem, or. If the extension
17 hearing involves an adult expectant mother of an unborn child under s. 48.133, the
18 court shall notify the adult expectant mother, the unborn child through the unborn
19 child's guardian ad litem, all the parties present at the original hearing, and the
20 district attorney or corporation counsel in the county in which the dispositional order
21 was entered, of the time and place of the hearing.

22 **SECTION 98.** 48.365 (2g) (b) 4. of the statutes is created to read:

23 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home,
24 specific information showing that active efforts under s. 48.028 (4) (d) 2. have been

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1 made to prevent the breakup of the Indian family and that those efforts have proved
2 unsuccessful.

3 **SECTION 99.** 48.365 (2m) (a) 1. of the statutes is amended to read:

4 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
5 extension. If the child is placed outside of his or her home, the person or agency
6 primarily responsible for providing services to the child shall present as evidence
7 specific information showing that the person or agency has made reasonable efforts
8 to achieve the goal of the child's permanency plan, unless return of the child to the
9 home is the goal of the permanency plan and any of the circumstances specified in
10 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home,
11 the person or agency primarily responsible for providing services to the Indian child
12 shall also present as evidence specific information showing that the person or agency
13 has made active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian
14 family and that those efforts have proved unsuccessful.

15 1m. The judge shall make findings of fact and conclusions of law based on the
16 evidence. The findings of fact shall include a finding as to whether reasonable efforts
17 were made by the agency primarily responsible for providing services to the child to
18 achieve the goal of the child's permanency plan, unless return of the child to the home
19 is the goal of the permanency plan and the judge finds that any of the circumstances
20 specified in under s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who
21 is placed outside the home, the findings of fact shall also include a finding as to
22 whether active efforts under s. 48.028 (4) (d) 2. were made to prevent the breakup
23 of the Indian family and as to whether those efforts have proved unsuccessful. An
24 order shall be issued under s. 48.355.

25 **SECTION 100.** 48.365 (2m) (a) 3. of the statutes is amended to read:

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1 48.365 (2m) (a) 3. The judge shall make the findings ~~specified in~~ under subd.
2 1. 1m. relating to reasonable efforts to achieve the goal of the child's permanency plan
3 and the findings ~~specified in~~ under subd. 2. on a case-by-case basis based on
4 circumstances specific to the child and shall document or reference the specific
5 information on which those findings are based in the order issued under s. 48.355.
6 An order that merely references subd. ~~1.~~ 1m. or 2. without documenting or
7 referencing that specific information in the order or an amended order that
8 retroactively corrects an earlier order that does not comply with this subdivision is
9 not sufficient to comply with this subdivision.

10 **SECTION 101.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)
11 and amended to read:

12 48.365 (2m) (ad) If the judge finds that any of the circumstances ~~specified in~~
13 under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold
14 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to
15 determine the permanency plan for the child. ~~If a hearing is held under this~~
16 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
17 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

18 **SECTION 102.** 48.365 (2m) (ad) 2. of the statutes is repealed.

19 **SECTION 103.** 48.365 (2m) (ag) of the statutes is amended to read:

20 48.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,
21 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
22 ~~par. (ad) 2. or~~ sub. (2) an opportunity to be heard at the hearing by permitting the
23 foster parent, treatment foster parent, or other physical custodian to make a written
24 or oral statement during the hearing, or to submit a written statement prior to the
25 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,

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1 or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing
2 under ~~par. (ad) 2.~~ or sub. (2) and an opportunity to be heard under this paragraph
3 does not become a party to the proceeding on which the hearing is held solely on the
4 basis of receiving that notice and having the opportunity to be heard.

5 **SECTION 104.** 48.38 (4) (i) of the statutes is created to read:

6 48.38 (4) (i) If the child is an Indian child, all of the following:

7 1. The name, address, and telephone number of the Indian child's Indian
8 custodian and tribe.

9 2. A description of the remedial services and rehabilitation programs offered
10 under s. 48.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

11 3. A statement as to whether the Indian child's placement is in compliance with
12 the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028
13 (7) (c) and, if the placement is not in compliance with that order, a statement as to
14 whether there is good cause, as described in s. 48.028 (7) (e), for departing from that
15 order.

16 **SECTION 105.** 48.38 (4m) of the statutes is created to read:

17 48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding
18 under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the
19 circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
20 court shall hold a hearing within 30 days after the date of that finding to determine
21 the permanency plan for the child. If a hearing is held under this paragraph, the
22 agency responsible for preparing the permanency plan shall file the permanency
23 plan with the court not less than 5 days before the hearing.

24 (b) At least 10 days before the hearing the court shall notify the child, any
25 parent, guardian, and legal custodian of the child, any foster parent, treatment foster

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1 parent, or other physical custodian described in s. 48.62 (2) of the child and, if the
2 child is an Indian child, the Indian child's Indian custodian and tribe of the time,
3 place, and purpose of the hearing.

4 (c) If the court knows or has reason to know that the child is an Indian child,
5 notice under par. (b) to the Indian child's parent, Indian custodian, and tribe shall
6 be provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under
7 par. (a) until at least 10 days after receipt of the notice by the Indian child's parent,
8 Indian custodian, and tribe or until at least 25 days after receipt of the notice by the
9 U.S. secretary of the interior. On request of the Indian child's parent, Indian
10 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
11 to enable the requester to prepare for the hearing.

12 (d) The court shall give a foster parent, treatment foster parent, or other
13 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
14 an opportunity to be heard at the hearing by permitting the foster parent, treatment
15 foster parent, or other physical custodian to make a written or oral statement during
16 the hearing, or to submit a written statement prior to the hearing, relevant to the
17 issues to be determined at the hearing. The foster parent, treatment foster parent,
18 or other physical custodian does not become a party to the proceeding on which the
19 hearing is held solely on the basis of receiving that notice and having the opportunity
20 to be heard.

21 **SECTION 106.** 48.38 (5) (b) of the statutes is amended to read:

22 48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~
23 ~~child, if he or she is 12 years of age or older, and; the child's parent, guardian, and~~
24 ~~legal custodian;~~ the child's foster parent, the child's treatment foster parent, the
25 operator of the facility in which the child is living, or the relative with whom the child

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1 is living; and, if the child is an Indian child, the Indian child's Indian custodian and
2 tribe of the date, time, and place of the review, of the issues to be determined as part
3 of the review, and of the fact that they may have an opportunity to be heard at the
4 review by submitting written comments not less than 10 working days before the
5 review or by participating at the review. The court or agency shall notify the person
6 representing the interests of the public, the child's counsel, the child's guardian ad
7 litem, and the child's court-appointed special advocate of the date of the review, of
8 the issues to be determined as part of the review, and of the fact that they may submit
9 written comments not less than 10 working days before the review. The notices
10 under this paragraph shall be provided in writing not less than 30 days before the
11 review and copies of the notices shall be filed in the child's case record.

12 **SECTION 107.** 48.38 (5) (bm) of the statutes is created to read:

13 48.38 (5) (bm) If the child is an Indian child, notice under par. (b) to the Indian
14 child's parent, Indian custodian, and tribe shall be provided in the manner specified
15 in s. 48.028 (4) (a). No review may be held until at least 10 days after receipt of the
16 notice by the Indian child's parent, Indian custodian, and tribe or until at least 25
17 days after receipt of the notice by the U.S. secretary of the interior. On request of the
18 Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance
19 of up to 20 additional days to enable the requester to prepare for the review.

20 **SECTION 108.** 48.38 (5) (c) 8. of the statutes is created to read:

21 48.38 (5) (c) 8. If the child is an Indian child, whether active efforts under s.
22 48.028 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family,
23 whether those efforts have proved unsuccessful, whether the Indian child's
24 placement is in compliance with the order of placement preference under s. 48.028
25 (7) (b) or, if applicable, s. 48.028 (7) (c), and, if the placement is not in compliance with

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1 that order, whether there is good cause, as described in s. 48.028 (7) (e), for departing
2 from that order.

3 **SECTION 109.** 48.38 (5) (d) of the statutes is amended to read:

4 48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the
5 permanency plan shall, at least 5 days before a review by a review panel, provide to
6 each person appointed to the review panel, the child's parent, guardian, and legal
7 custodian, the person representing the interests of the public, the child's counsel, the
8 child's guardian ad litem ~~and~~, the child's court-appointed special advocate, and, if
9 the child is an Indian child, the Indian child's Indian custodian and tribe a copy of
10 the permanency plan and any written comments submitted under par. (b).
11 Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person
12 representing the interests of the public, the child's counsel, the child's guardian ad
13 litem ~~and~~, the child's court-appointed special advocate, and, if the child is an Indian
14 child, the Indian child's Indian custodian and tribe may have access to any other
15 records concerning the child for the purpose of participating in the review. A person
16 permitted access to a child's records under this paragraph may not disclose any
17 information from the records to any other person.

18 **SECTION 110.** 48.38 (5) (e) of the statutes is amended to read:

19 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
20 the determinations under par. (c) and shall provide a copy to the court that entered
21 the order,; the child or the child's counsel or guardian ad litem,; the person
22 representing the interests of the public,; the child's parent ~~or~~, guardian, or legal
23 custodian; the child's court-appointed special advocate ~~and~~; the child's foster parent,
24 the child's treatment foster parent, or the operator of the facility where the child is

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1 living; and, if the child is an Indian child, the Indian child's Indian custodian and
2 tribe.

3 **SECTION 111.** 48.38 (5m) (b) of the statutes is amended to read:

4 48.38 **(5m)** (b) Not less than 30 days before the date of the hearing, the court
5 shall notify the child; the child's parent, guardian, and legal custodian; the child's
6 foster parent or treatment foster parent, the operator of the facility in which the child
7 is living, or the relative with whom the child is living; the child's counsel, the child's
8 guardian ad litem, and the child's court-appointed special advocate; the agency that
9 prepared the permanency plan; ~~and~~ the person representing the interests of the
10 public; and, if the child is an Indian child, the Indian child's Indian custodian and
11 tribe of the date, time, and place of the hearing.

12 **SECTION 112.** 48.38 (5m) (bm) of the statutes is created to read:

13 48.38 **(5m)** (bm) If the child is an Indian child, notice under par. (b) to the Indian
14 child's parent, Indian custodian, and tribe shall be provided in the manner specified
15 in s. 48.028 (4) (a). No hearing under par. (a) may be held until at least 10 days after
16 receipt of the notice by the Indian child's parent, Indian custodian, and tribe or until
17 at least 25 days after receipt of the notice by the U.S. secretary of the interior. On
18 request of the Indian child's parent, Indian custodian, or tribe, the court shall grant
19 a continuance of up to 20 additional days to enable the requester to prepare for the
20 hearing.

21 **SECTION 113.** 48.38 (5m) (d) of the statutes is amended to read:

22 48.38 **(5m)** (d) At least 5 days before the date of the hearing the agency that
23 prepared the permanency plan shall provide a copy of the permanency plan and any
24 written comments submitted under par. (c) to the court, to the child's parent,
25 guardian, and legal custodian, to the person representing the interests of the public,

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1 to the child’s counsel or guardian ad litem, ~~and to the child’s court–appointed special~~
2 ~~advocate, and, if the child is an Indian child, to the Indian child’s Indian custodian~~
3 ~~and tribe~~. Notwithstanding s. 48.78 (2) (a), the person representing the interests of
4 the public, the child’s counsel or guardian ad litem, ~~and the child’s court–appointed~~
5 ~~special advocate, and, if the child is an Indian child, the Indian child’s Indian~~
6 ~~custodian and tribe~~ may have access to any other records concerning the child for the
7 purpose of participating in the review. A person permitted access to a child’s records
8 under this paragraph may not disclose any information from the records to any other
9 person.

10 **SECTION 114.** 48.38 (5m) (e) of the statutes is amended to read:

11 48.38 **(5m)** (e) After the hearing, the court shall make written findings of fact
12 and conclusions of law relating to the determinations under sub. (5) (c) and shall
13 provide a copy of those findings of fact and conclusions of law to the child; the child’s
14 parent, guardian, and legal custodian; the child’s foster parent or treatment foster
15 parent, the operator of the facility in which the child is living, or the relative with
16 whom the child is living; the child’s court–appointed special advocate; the agency
17 that prepared the permanency plan; ~~and the person representing the interests of the~~
18 ~~public; and, if the child is an Indian child, the Indian child’s Indian custodian and~~
19 ~~tribe~~. The court shall make the findings specified in sub. (5) (c) 7. on a case–by–case
20 basis based on circumstances specific to the child and shall document or reference
21 the specific information on which those findings are based in the findings of fact and
22 conclusions of law prepared under this paragraph. Findings of fact and conclusions
23 of law that merely reference sub. (5) (c) 7. without documenting or referencing that
24 specific information in the findings of fact and conclusions of law or amended
25 findings of fact and conclusions of law that retroactively correct earlier findings of

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1 fact and conclusions of law that do not comply with this paragraph are not sufficient
2 to comply with this paragraph.

3 **SECTION 115.** 48.41 (2) (e) of the statutes is created to read:

4 48.41 (2) (e) In the case of an Indian child, the consent is given as provided in
5 s. 48.028 (5) (b).

6 **SECTION 116.** 48.415 (intro.) of the statutes is amended to read:

7 **48.415 Grounds for involuntary termination of parental rights.** (intro.)
8 At the fact-finding hearing the court or jury may make a finding that shall determine
9 whether grounds exist for the termination of parental rights. If services for the child
10 and family or for the unborn child and expectant mother have been ordered by the
11 court, the court or jury shall also determine whether the agency responsible for the
12 care of the child and family or of the unborn child and expectant mother has made
13 an earnest and conscientious effort to take good faith steps to provide those services
14 that takes into consideration the characteristics of the parent or child or of the
15 expectant mother or child, the level of cooperation of the parent or expectant mother,
16 and other relevant circumstances of the case. If the child is an Indian child, the court
17 or jury shall also determine whether continued custody of the Indian child by the
18 Indian child's parent or Indian custodian is likely to result in serious emotional or
19 physical damage to the Indian child under s. 48.028 (4) (e) 1. and whether the agency
20 has made active efforts under s. 48.028 (4) (e) 2. to prevent the breakup of the Indian
21 family and that those efforts have proved unsuccessful. Grounds for termination of
22 parental rights shall be one of the following:

23 **SECTION 117.** 48.415 (2) (a) 2. of the statutes is repealed.

24 **SECTION 118.** 48.417 (2) (cm) of the statutes is created to read:

SENATE BILL 572**SECTION 118**

1 48.417 (2) (cm) In the case of an Indian child, the agency primarily responsible
2 for providing services to the Indian child and the family under a court order, if
3 required under s. 48.355 (2) (b) 6v. to make active efforts under s. 48.028 (4) (d) 2. to
4 prevent the breakup of the Indian family, has not provided to the Indian child's
5 family, consistent with the time period in the child's permanency plan, the services
6 necessary to prevent the breakup of the Indian family.

7 **SECTION 119.** 48.42 (1) (d) of the statutes is amended to read:

8 48.42 (1) (d) A statement of whether the child may be subject to the federal
9 Indian child welfare act Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
10 be subject to that act, the names of the child's Indian custodian, if any, and tribe, if
11 known.

12 **SECTION 120.** 48.42 (1) (e) of the statutes is created to read:

13 48.42 (1) (e) If services for the child and family or for the unborn child and
14 expectant mother have been ordered by the court, reliable and credible evidence
15 showing that the agency responsible for the care of the child and family or of the
16 unborn child and expectant mother has made an earnest and conscientious effort to
17 take good faith steps to provide those services that takes into consideration the
18 characteristics of the parent or child or of the expectant mother or child, the level of
19 cooperation of the parent or expectant mother, and other relevant circumstances of
20 the case.

21 **SECTION 121.** 48.42 (1) (f) of the statutes is created to read:

22 48.42 (1) (f) If the child is an Indian child, reliable and credible information
23 showing that continued custody of the Indian child by the Indian child's parent or
24 Indian custodian is likely to result in serious emotional or physical damage to the
25 Indian child under s. 48.028 (4) (e) 1. and reliable and credible information showing

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1 that the agency has made active efforts under s. 48.028 (4) (e) 2. to prevent the
2 breakup of the Indian family and that those efforts have proved unsuccessful.

3 **SECTION 122.** 48.42 (2) (c) of the statutes is amended to read:

4 48.42 (2) (c) The guardian, guardian ad litem ~~and~~, legal custodian, and Indian
5 custodian of the child.

6 **SECTION 123.** 48.42 (2g) (ag) of the statutes is created to read:

7 48.42 (2g) (ag) If the petitioner knows or has reason to know that the child is
8 an Indian child, the petitioner shall cause the summons and petition to be served on
9 the Indian child's parent and Indian custodian in the manner specified in s. 48.028
10 (4) (a). In like manner, the petitioner shall also notify the Indian child's tribe of all
11 hearings on the petition. The first notice to an Indian child's tribe shall be written,
12 shall have a copy of the petition attached to it, and shall state the nature, location,
13 date, and time of the initial hearing. No hearing may be held on the petition until
14 at least 10 days after receipt of notice of the hearing by the Indian child's parent,
15 Indian custodian, and tribe or until at least 25 days after receipt of the notice by the
16 U.S. secretary of the interior. On request of the Indian child's parent, Indian
17 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
18 to enable the requester to prepare for the hearing.

19 **SECTION 124.** 48.42 (4) (a) of the statutes is amended to read:

20 48.42 (4) (a) *Personal service.* Except as provided in this paragraph ~~and~~, par.
21 (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally
22 upon the parties specified in sub. (2), if known, at least 7 days before the date of the
23 hearing. Service of summons is not required if the party submits to the jurisdiction
24 of the court. Service upon parties who are not natural persons and upon persons
25 under a disability shall be as prescribed in s. 801.11.

SENATE BILL 572**SECTION 125**

1 **SECTION 125.** 48.422 (1) of the statutes is amended to read:

2 48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the
3 petition to terminate parental rights shall be held within 30 days after the petition
4 is filed. At the hearing on the petition to terminate parental rights the court shall
5 determine whether any party wishes to contest the petition and inform the parties
6 of their rights under sub. (4) and s. 48.423.

7 **SECTION 126.** 48.422 (2) of the statutes is amended to read:

8 48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested
9 the court shall set a date for a fact-finding hearing to be held within 45 days of after
10 the hearing on the petition, unless all of the necessary parties agree to commence
11 with the hearing on the merits immediately.

12 **SECTION 127.** 48.422 (6) (a) of the statutes is amended to read:

13 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
14 parents do not subsequently intermarry under s. 767.803 and for whom paternity
15 has not been established, or for whom a declaration of paternal interest has not been
16 filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42
17 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g)
18 (b) is mailed, the court shall hear testimony concerning the paternity of the child.
19 Based on the testimony, the court shall determine whether all interested parties who
20 are known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall
21 adjourn the hearing and order appropriate notice to be given.

22 **SECTION 128.** 48.422 (8) of the statutes is amended to read:

23 48.422 (8) If the petition for termination of parental rights is filed by an agency
24 enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit file a
25 report to with the court as provided in s. 48.425 (1), except that, if the child is an

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1 Indian child, the court may order the agency or request the tribal child welfare
2 department of the Indian child's tribe to file that report.

3 **SECTION 129.** 48.423 (1) of the statutes is amended to read:

4 **48.423 (1) RIGHTS TO PATERNITY DETERMINATION.** If a person appears at the
5 hearing and claims that he is the father of the child, the court shall set a date for a
6 hearing on the issue of paternity ~~or, if~~. If the child is an Indian child or if it appears
7 to the court that the determination of paternity may result in a finding that the child
8 is an Indian child, the court shall cause notice of the hearing on the issue of paternity
9 to be provided to the Indian child's parent, Indian custodian, and tribe under s. 48.42
10 (2g) (ag), and the hearing may not be held until at least 10 days after receipt of notice
11 under s. 48.42 (2g) (ag) by the Indian child's parent, Indian custodian, and tribe or
12 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
13 On request of the Indian child's parent, Indian custodian, or tribe, the court shall
14 grant a continuance of up to 20 additional days to enable the requester to prepare
15 for the hearing. If all parties agree, the court may immediately commence hearing
16 testimony concerning the issue of paternity. The court shall inform the person
17 claiming to be the father of the child of any right to counsel under s. 48.23. The person
18 claiming to be the father of the child must prove paternity by clear and convincing
19 evidence. A person who establishes his paternity of the child under this section may
20 further participate in the termination of parental rights proceeding only if the person
21 meets the conditions specified in sub. (2) or meets a condition specified in s. 48.42 (2)
22 ~~or~~ (b) or (bm).

23 **SECTION 130.** 48.424 (1) of the statutes is renumbered 48.424 (1) (intro.) and
24 amended to read:

SENATE BILL 572**SECTION 130**

1 48.424 (1) The purpose of the fact-finding hearing is to determine whether
2 ~~grounds exist for the termination of parental rights in those cases where the~~
3 ~~termination in cases in which the petition~~ was contested at the hearing on the
4 petition under s. 48.422 all of the following:

5 (a) Whether grounds exist for the termination of parental rights.

6 **SECTION 131.** 48.424 (1) (b) of the statutes is created to read:

7 48.424 (1) (b) Whether the allegations specified in s. 48.42 (1) (e) have been
8 proved in cases in which services have been ordered by the court.

9 **SECTION 132.** 48.424 (1) (c) of the statutes is created to read:

10 48.424 (1) (c) Whether the allegations specified in s. 48.42 (1) (f) have been
11 proved in cases in which the child is an Indian child.

12 **SECTION 133.** 48.424 (2) (intro.) of the statutes is amended to read:

13 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the
14 procedure specified in s. 48.31 ~~except that~~ as follows:

15 **SECTION 134.** 48.424 (2) (a) of the statutes is amended to read:

16 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

17 **SECTION 135.** 48.424 (3) of the statutes is amended to read:

18 48.424 (3) If the facts are determined by a jury, the jury may only decide
19 whether any grounds for the termination of parental rights have been ~~proven~~ proved,
20 whether the allegations specified in s. 48.42 (1) (e) have been proved in cases in which
21 services have been ordered by the court, and whether the allegations specified in s.
22 48.42 (1) (f) have been proved in cases in which the child is an Indian child. The court
23 shall decide what disposition is in the best interest of the child.

24 **SECTION 136.** 48.424 (4) (intro.) of the statutes is amended to read:

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1 48.424 (4) (intro.) If grounds for the termination of parental rights are found
2 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
3 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
4 immediately to hear evidence and motions related to the dispositions enumerated in
5 s. 48.427. The Except as provided in s. 48.42 (2g) (ag), the court may delay making
6 the disposition and set a date for a dispositional hearing no later than 45 days after
7 the fact-finding hearing if any of the following apply:

8 **SECTION 137.** 48.424 (4) (a) of the statutes is amended to read:

9 48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

10 **SECTION 138.** 48.424 (4) (b) of the statutes is amended to read:

11 48.424 (4) (b) The court has not yet received a report to the court on the history
12 of the child as provided in s. 48.425 ~~from an agency enumerated in s. 48.069 (1) or~~
13 ~~(2) and the court now directs the agency to prepare this report to be considered~~ orders
14 an agency enumerated in s. 48.069 (1) or (2) to file that report with the court, or, in
15 the case of an Indian child, now orders that agency or requests the tribal child welfare
16 department of the Indian child's tribe to file such a report, before the court makes the
17 disposition on the petition.

18 **SECTION 139.** 48.424 (5) of the statutes is amended to read:

19 48.424 (5) If the court delays making a permanent disposition under sub. (4),
20 it may transfer temporary custody of the child to an agency for placement of the child
21 until the dispositional hearing. Placement of an Indian child under this subsection
22 shall comply with the order of placement preference under s. 48.028 (7) (b) or, if
23 applicable, s. 48.028 (7) (c), unless the agency finds good cause, as described in s.
24 48.028 (7) (e), for departing from that order.

25 **SECTION 140.** 48.425 (1) (intro.) of the statutes is amended to read:

SENATE BILL 572**SECTION 140**

1 48.425 (1) (intro.) ~~If the petition for the termination of parental rights is filed~~
2 ~~by an agency, or if the court orders an agency enumerated under s. 48.069 (1) or (2)~~
3 ~~to file a report under s. 48.422 (8) or 48.424 (4) (b) or requests the tribal child welfare~~
4 ~~department of an Indian child's tribe to file such a report, the agency or tribal child~~
5 ~~welfare department, if that department consents,~~ shall file a report with the court
6 which shall include:

7 **SECTION 141.** 48.425 (1) (cm) of the statutes is created to read:

8 48.425 (1) (cm) If the child is an Indian child, specific information showing that
9 continued custody of the child by the parent or Indian custodian is likely to result in
10 serious emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the
11 Indian child has previously been adjudged to be in need of protection or services,
12 specific information showing that the agency or person responsible for providing
13 services to the Indian child and his or her family has made active efforts under s.
14 48.028 (4) (e) 2. to prevent the breakup of the Indian family and that those efforts
15 have proved unsuccessful.

16 **SECTION 142.** 48.427 (5) of the statutes is created to read:

17 48.427 (5) (cm) In placing an Indian child in a preadoptive placement following
18 a transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian
19 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)
20 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.028
21 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court or agency finds good cause,
22 as described in s. 48.028 (7) (e), for departing from that order.

23 **SECTION 143.** 48.427 (6) (b) 4. of the statutes is created to read:

24 48.427 (6) (b) 4. If the child is or may be an Indian child, information relating
25 to the child's membership or eligibility for membership in an Indian tribe.

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1 **SECTION 144.** 48.428 (2) (a) of the statutes is amended to read:

2 48.428 (2) (a) Except as provided in par. (b), when a court places a child in
3 sustaining care after an order under s. 48.427 (4), the court shall transfer legal
4 custody of the child to the county department, the department, in a county having
5 a population of 500,000 or more, or a licensed child welfare agency, transfer
6 guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. or (am), and
7 place the child in the home of a licensed foster parent, licensed treatment foster
8 parent, or kinship care relative with whom the child has resided for 6 months or
9 longer. In placing an Indian child in sustaining care, the court shall comply with the
10 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c),
11 unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from
12 that order. Pursuant to such a placement, this that licensed foster parent, licensed
13 treatment foster parent, or kinship care relative shall be a sustaining parent with
14 the powers and duties specified in sub. (3).

15 **SECTION 145.** 48.428 (2) (b) of the statutes is amended to read:

16 48.428 (2) (b) When a court places a child in sustaining care after an order
17 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
18 under s. 48.977 (2), the court may transfer legal custody of the child to the county
19 department, the department, in a county having a population of 500,000 or more, or
20 a licensed child welfare agency, transfer guardianship of the child to an agency listed
21 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
22 parent, licensed treatment foster parent, or kinship care relative with whom the
23 child has resided for 6 months or longer. In placing an Indian child in sustaining
24 care, the court shall comply with the order of placement preference under s. 48.028
25 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described

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1 in s. 48.028 (7) (e), for departing from that order. Pursuant to such a placement, that
2 licensed foster parent, licensed treatment foster parent, or kinship care relative shall
3 be a sustaining parent with the powers and duties specified in sub. (3). If the court
4 transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4.
5 or (am), the court shall terminate the guardianship under s. 48.977.

6 **SECTION 146.** 48.43 (5) (bm) of the statutes is created to read:

7 48.43 (5) (bm) If the child is an Indian child, the court shall also provide notice
8 of the hearing under par. (b) to the Indian child's tribe in the manner specified in s.
9 48.028 (4) (a). No hearing may be held under par. (b) until at least 10 days after
10 receipt of notice of the hearing by the Indian child's tribe or until at least 25 days after
11 receipt of notice of the hearing by the U.S. secretary of the interior. On request of the
12 Indian child's tribe, the court shall grant a continuance of up to 20 additional days
13 to enable the tribe to prepare for the hearing.

14 **SECTION 147.** 48.43 (5) (c) of the statutes is amended to read:

15 48.43 (5) (c) Following the hearing, the court shall make all of the
16 determinations specified under s. 48.38 (5) (c), except the determinations relating to
17 the child's parents. The court may amend the order under sub. (1) to transfer the
18 child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1.
19 to 4. or (am) that consents to the transfer, if the court determines that the transfer
20 is in the child's best interest. If an Indian child's guardianship and custody are
21 transferred under this paragraph, the agency consenting to the transfer shall comply
22 with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s.
23 48.028 (7) (c) in placing the child, unless the agency finds good cause, as described
24 in s. 48.028 (7) (e), for departing from that order. If an order is amended, the agency
25 that prepared the permanency plan shall revise the plan to conform to the order and

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1 shall file a copy of the revised plan with the court. Each plan filed under this
2 paragraph shall be made a part of the court order.

3 **SECTION 148.** 48.43 (5m) of the statutes is amended to read:

4 48.43 (5m) Either the court or the agency that prepared the permanency plan
5 shall furnish a copy of the original plan and each revised plan to the child, if he or
6 she is 12 years of age or over, and to the child's foster parent, the child's treatment
7 foster parent, or the operator of the facility in which the child is living, and, if the
8 child is an Indian child, to the Indian child's tribe.

9 **SECTION 149.** 48.43 (6) (a) of the statutes is amended to read:

10 48.43 (6) (a) Judgments under this subchapter terminating parental rights are
11 final and are appealable under s. 808.03 (1) according to the procedure specified in
12 s. 809.107 and are subject to a petition for rehearing or a motion for relief only as
13 provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.028 (5) (c)
14 and (6). The attorney representing a person during a proceeding under this
15 subchapter shall continue representation of that person by filing a notice of intent
16 to appeal under s. 809.107 (2), unless the attorney has been previously discharged
17 during the proceeding by the person or by the trial court.

18 **SECTION 150.** 48.43 (6) (c) of the statutes is amended to read:

19 48.43 (6) (c) In Except as provided in s. 48.028 (5) (c) and (6), in no event may
20 any person, for any reason, collaterally attack a judgment terminating parental
21 rights more than one year after the date on which the time limit for filing an appeal
22 from the judgment has expired, or more than one year after the date on which all
23 appeals from the judgment, if any were filed, have been decided, whichever is later.

24 **SECTION 151.** 48.46 (2) of the statutes is amended to read:

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1 48.46 (2) A parent who has consented to the termination of his or her parental
2 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
3 which his or her parental rights were terminated may move the court for relief from
4 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
5 such motion shall be filed within 30 days after the entry of the judgment or order
6 terminating parental rights, unless the parent files a timely notice of intent to
7 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall
8 be filed within the time permitted by s. 809.107 (5). A motion under this subsection
9 does not affect the finality or suspend the operation of the judgment or order
10 terminating parental rights. Motions under this subsection or s. 48.028 (5) (c) or (6)
11 and appeals to the court of appeals shall be the exclusive remedies for such a parent
12 to obtain a new hearing in a termination of parental rights proceeding.

13 **SECTION 152.** 48.48 (3m) (intro.) of the statutes is amended to read:

14 48.48 (3m) (intro.) To accept appointment by ~~an American Indian~~ a tribal court
15 in this state as guardian of a child for the purpose of making an adoptive placement
16 for the child if all of the following conditions exist:

17 **SECTION 153.** 48.48 (8m) of the statutes is amended to read:

18 48.48 (8m) To enter into agreements with ~~American~~ Indian tribes in this state
19 to implement the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC
20 1911 to 1963.

21 **SECTION 154.** 48.485 of the statutes is amended to read:

22 **48.485 Transfer of tribal Indian children to department for adoption.**

23 If the department accepts guardianship or legal custody or both from ~~an American~~
24 Indian a tribal court under s. 48.48 (3m), the department shall seek a permanent
25 adoptive placement for the child. If a permanent adoptive placement is not in

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1 progress within 2 years after entry of the termination of parental rights order by the
2 tribal court, the department may petition the tribal court to transfer legal custody
3 or guardianship of the Indian child back to the Indian tribe, except that the
4 department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe
5 legal custody or guardianship of ~~a~~ an Indian child who was initially taken into
6 custody under s. 48.195 (1).

7 **SECTION 155.** 48.487 (2) of the statutes, as affected by 2007 Wisconsin Act 20,
8 is amended to read:

9 48.487 (2) ADOLESCENT SELF-SUFFICIENCY SERVICES. From the allocation under
10 sub. (1m), the department may provide a grant annually in the amount of \$85,000
11 to the elected governing body of ~~a federally recognized American~~ an Indian tribe ~~or~~
12 ~~band~~ to provide services for adolescent parents which shall emphasize high school
13 graduation and vocational preparation, training, and experience and may be
14 structured so as to strengthen the adolescent parent's capacity to fulfill parental
15 responsibilities by developing social skills and increasing parenting skills. The
16 Indian tribe ~~or band~~ seeking to receive a grant to provide these services shall develop
17 a proposed service plan that is approved by the department.

18 **SECTION 156.** 48.487 (3) (b) of the statutes, as affected by 2007 Wisconsin Act
19 20, is amended to read:

20 48.487 (3) (b) From the allocation under sub. (1m), the department may provide
21 a grant annually in the amount of \$65,000 to the elected governing body of ~~a federally~~
22 ~~recognized American~~ an Indian tribe ~~or band~~ to provide to high-risk adolescents
23 pregnancy and parenthood prevention services which shall be structured so as to
24 increase development of decision-making and communications skills, promote

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1 graduation from high school, and expand career and other options and which may
2 address needs of adolescents with respect to pregnancy prevention.

3 **SECTION 157.** 48.487 (4m) (b) (intro.) of the statutes, as affected by 2007
4 Wisconsin Act 20, is amended to read:

5 48.487 (4m) (b) (intro.) From the allocation under sub. (1m), the department
6 may provide a grant annually in the amount of \$60,000 to the elected governing body
7 of ~~a federally recognized American~~ an Indian tribe ~~or band~~ for the provision of
8 information to members of the Indian tribe ~~or band~~ in order to increase community
9 knowledge about problems of adolescents and information to and activities for
10 adolescents, particularly female adolescents, in order to enable the adolescents to
11 develop skills with respect to all of the following:

12 **SECTION 158.** 48.487 (4m) (c) of the statutes, as affected by 2007 Wisconsin Act
13 20, is amended to read:

14 48.487 (4m) (c) Each funded tribal project under par. (b) shall provide services
15 in areas of the state as approved by the Indian tribe ~~or band~~ and the department.
16 The department shall determine the boundaries of the regional areas prior to
17 soliciting project grant applications.

18 **SECTION 159.** 48.487 (4m) (d) of the statutes, as affected by 2007 Wisconsin Act
19 20, is amended to read:

20 48.487 (4m) (d) Prior to making grants to applying Indian tribes ~~or bands~~
21 under par. (b), the department shall consider whether and how the applying Indian
22 tribe ~~or band~~ proposes to coordinate its services with other public or private
23 resources, programs, or activities in the region and the state.

24 **SECTION 160.** 48.563 (3) of the statutes, as affected by 2007 Wisconsin Act 20,
25 is amended to read:

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1 48.563 **(3)** TRIBAL CHILD CARE. For child care services under 42 USC 9858, the
2 department shall distribute not more than \$412,800 in each fiscal year from the
3 appropriation account under s. 20.437 (1) (b) to ~~federally recognized American~~
4 Indian tribes ~~or bands. A tribe or band.~~ An Indian tribe that receives funding under
5 this subsection shall use that funding to provide child care for an eligible child, as
6 defined in 42 USC 9858n (4).

7 **SECTION 161.** 48.565 (intro.) of the statutes, as created by 2007 Wisconsin Act
8 20, is amended to read:

9 **48.565 Carry-over of children and family aids funds.** (intro.) Funds
10 allocated by the department under s. 48.569 (1) (d) but not spent or encumbered by
11 counties, governing bodies of ~~federally recognized American~~ Indian tribes, or private
12 nonprofit organizations by December 31 of each year and funds recovered under s.
13 48.569 (2) (b) and deposited into the appropriation account under s. 20.437 (1) (b)
14 lapse to the general fund on the succeeding January 1 unless carried forward to the
15 next calendar year under s. 20.437 (1) (b) or as follows:

16 **SECTION 162.** 48.57 (3p) (h) 2. of the statutes, as affected by 2007 Wisconsin Act
17 20, is amended to read:

18 48.57 **(3p)** (h) 2. The request for review shall be filed with the director of the
19 county department or, in a county having a population of 500,000 or more, with the
20 person designated by the secretary to receive requests for review filed under this
21 subdivision. If the governing body of ~~a federally recognized American~~ an Indian
22 tribe ~~or band~~ has entered into an agreement under sub. (3t) to administer the
23 program under this subsection and sub. (3m), the request for review shall be filed
24 with the person designated by that governing body to receive requests for review filed
25 under this subdivision.

SENATE BILL 572**SECTION 163**

1 **SECTION 163.** 48.57 (3p) (h) 3. (intro.) of the statutes, as affected by 2007
2 Wisconsin Act 20, is amended to read:

3 48.57 **(3p)** (h) 3. (intro.) The director of the county department, the person
4 designated by the governing body of ~~a federally recognized American~~ an Indian tribe
5 ~~or band~~ or, in a county having a population of 500,000 or more, the person designated
6 by the secretary shall review the denial of payments or the prohibition on
7 employment or being an adult resident to determine if the conviction record on which
8 the denial or prohibition is based includes any arrests, convictions, or penalties that
9 are likely to adversely affect the child or the ability of the kinship care relative to care
10 for the child. In reviewing the denial or prohibition, the director of the county
11 department, the person designated by the governing body of the ~~federally recognized~~
12 ~~American~~ Indian tribe ~~or band~~ or the person designated by the secretary shall
13 consider all of the following factors:

14 **SECTION 164.** 48.57 (3p) (h) 4. of the statutes, as affected by 2007 Wisconsin Act
15 20, is amended to read:

16 48.57 **(3p)** (h) 4. If the director of the county department, the person designated
17 by the governing body of the ~~federally recognized American~~ Indian tribe ~~or band~~ or,
18 in a county having a population of 500,000 or more, the person designated by the
19 secretary determines that the conviction record on which the denial of payments or
20 the prohibition on employment or being an adult resident is based does not include
21 any arrests, convictions, or penalties that are likely to adversely affect the child or
22 the ability of the kinship care relative to care for the child, the director of the county
23 department, the person designated by the governing body of the ~~federally recognized~~
24 ~~American~~ Indian tribe ~~or band~~, or the person designated by the secretary may
25 approve the making of payments under sub. (3m) or may permit a person receiving

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1 payments under sub. (3m) to employ a person in a position in which that person
2 would have regular contact with the child for whom payments are being made or
3 permit a person to be an adult resident.

4 **SECTION 165.** 48.57 (3t) of the statutes is amended to read:

5 48.57 (3t) Notwithstanding subs. (3m), (3n), and (3p), the department may
6 enter into an agreement with the governing body of ~~a federally recognized American~~
7 an Indian tribe or band to allow that governing body to administer the program
8 under subs. (3m), (3n), and (3p) within the boundaries of ~~that~~ the reservation of the
9 Indian tribe. Any agreement under this subsection relating to the administration
10 of the program under sub. (3m) shall specify the person with whom a request for
11 review under sub. (3p) (h) 2. may be filed and the person who has been designated
12 by the governing body to conduct the review under sub. (3p) (h) 3. and make the
13 determination under sub. (3p) (h) 4. Any agreement under this subsection relating
14 to the administration of the program under sub. (3n) shall specify who is to make any
15 determination as to whether a conviction record is satisfactory.

16 **SECTION 166.** 48.63 (1) of the statutes, as affected by 2007 Wisconsin Act 20,
17 is amended to read:

18 48.63 (1) Acting under court order or voluntary agreement, the child's parent
19 ~~or, guardian, or Indian custodian,~~ or the department, the department of corrections,
20 a county department, or a child welfare agency licensed to place children in foster
21 homes, treatment foster homes, or group homes may place a child or negotiate or act
22 as intermediary for the placement of a child in a foster home, treatment foster home,
23 or group home. Voluntary agreements under this subsection may not be used for
24 placements in facilities other than foster, treatment foster, or group homes and may
25 not be extended. A foster home or treatment foster home placement under a

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1 voluntary agreement may not exceed 180 days from the date on which the child was
2 removed from the home under the voluntary agreement. A group home placement
3 under a voluntary agreement may not exceed 15 days from the date on which the
4 child was removed from the home under the voluntary agreement, except as provided
5 in sub. (5). These time limitations do not apply to placements made under s. 48.345,
6 938.183, 938.34, or 938.345. Voluntary agreements may be made only under this
7 subsection and sub. (5) (b) and shall be in writing and shall specifically state that the
8 agreement may be terminated at any time by the parent ~~or~~, guardian, or Indian
9 custodian or by the child if the child's consent to the agreement is required. In the
10 case of an Indian child who is placed under this subsection by the voluntary
11 agreement of the Indian child's parent or Indian custodian, the voluntary consent of
12 the parent or Indian custodian to the placement shall be given as provided in s.
13 48.028 (5) (a). The child's consent to the agreement is required whenever the child
14 is 12 years of age or older. If a county department, the department, or the department
15 of corrections places a child or negotiates or acts as intermediary for the placement
16 of a child under this subsection, the voluntary agreement shall also specifically state
17 that the county department, department, or department of corrections has
18 placement and care responsibility for the child as required under 42 USC 672 (a) (2)
19 and has primary responsibility for providing services to the child.

20 **SECTION 167.** 48.63 (4) of the statutes is amended to read:

21 48.63 (4) A permanency plan under s. 48.38 is required for each child placed
22 in a foster home or treatment foster home under sub. (1). If the child is living in a
23 foster home or treatment foster home under a voluntary agreement, the agency that
24 negotiated or acted as intermediary for the placement shall prepare the permanency
25 plan within 60 days after the date on which the child was removed from his or her

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1 home under the voluntary agreement. A copy of each plan shall be provided to the
2 child if he or she is 12 years of age or over ~~and~~, to the child's parent or guardian, and,
3 if the child is an Indian child, to the Indian child's Indian custodian and tribe. If the
4 agency that arranged the voluntary placement intends to seek a court order to place
5 the child outside of his or her home at the expiration of the voluntary placement, the
6 agency shall prepare a revised permanency plan and file that revised plan with the
7 court prior to the date of the hearing on the proposed placement.

8 **SECTION 168.** 48.63 (5) (b) of the statutes is amended to read:

9 48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent,
10 as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe
11 and structured living arrangement and the parent ~~or~~, guardian, or Indian custodian
12 of the child consent, a child welfare agency licensed to place children in group homes
13 may place the child or arrange the placement of the child in a group home described
14 in s. 48.625 (1m). Before placing a child or arranging the placement of a child under
15 this paragraph, the child welfare agency shall report any suspected abuse or neglect
16 of the child as required under s. 48.981 (2). A voluntary agreement to place a child
17 in a group home described in s. 48.625 (1m) may be made only under this paragraph,
18 shall be in writing, and shall specifically state that the agreement may be terminated
19 at any time by the parent, guardian, Indian custodian, or child. In the case of an
20 Indian child who is placed in a group home under this paragraph by the voluntary
21 agreement of the Indian child's parent or Indian custodian, the voluntary consent of
22 the parent or Indian custodian to the placement shall be given as provided in s.
23 48.028 (5) (a). An initial placement under this paragraph may not exceed 180 days
24 from the date on which the child was removed from the home under the voluntary
25 agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement

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1 under this paragraph of a child who is under 16 years of age on the date of the initial
2 placement may be extended as provided in par. (d) 3. to 6. no more than once.

3 **SECTION 169.** 48.63 (5) (c) of the statutes is amended to read:

4 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed
5 in a group home under par. (b) and for any child of that child who is residing with that
6 child. The agency that placed the child or that arranged the placement of the child
7 shall prepare the plan within 60 days after the date on which the child was removed
8 from his or her home under the voluntary agreement and shall provide a copy of the
9 plan to the child ~~and, the child's parent or guardian, and, if the child is an Indian~~
10 child, the Indian child's Indian custodian and tribe.

11 **SECTION 170.** 48.63 (5) (d) 3. of the statutes is amended to read:

12 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has
13 arranged the placement of the child wishes to extend the placement of the child, the
14 agency shall prepare a revised permanency plan for that child and for any child of
15 that child who is residing with that child and submit the revised permanency plan
16 or plans, together with a request for a review of the revised permanency plan or plans
17 and the child's placement, to the independent reviewing agency before the expiration
18 of the child's placement. The request shall include a statement that an extension of
19 the child's placement would be in the best interests of the child, together with reliable
20 and credible information in support of that statement, a statement that the child and
21 the parent ~~or, guardian, or Indian custodian~~ of the child consent to the extension of
22 the child's placement, and a request that the independent reviewing agency approve
23 an extension of the child's placement. On receipt of a revised permanency plan or
24 plans and a request for review, the independent reviewing agency shall set a time and

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1 place for the review and shall advise the agency that placed the child or that arranged
2 the placement of the child of the time and place of the review.

3 **SECTION 171.** 48.63 (5) (d) 4. of the statutes is amended to read:

4 48.63 (5) (d) 4. Not less than 10 days before the review, the agency that placed
5 the child or that arranged the placement of the child shall provide a copy of the
6 revised permanency plan or plans and the request for review submitted under subd.
7 3. and notice of the time and place of the review to the child, the parent, guardian,
8 and legal custodian of the child, ~~and the operator of the group home in which the child~~
9 ~~is placed, and, if the child is an Indian child, the Indian child's Indian custodian and~~
10 ~~tribe~~, together with notice of the issues to be determined as part of the permanency
11 plan review and notice of the fact that those persons may have the opportunity to be
12 heard at the review by submitting written comments to that agency or the
13 independent reviewing agency before the review or by participating at the review.

14 **SECTION 172.** 48.63 (5) (d) 5. of the statutes is amended to read:

15 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present
16 information relevant to the issue of extension and information relevant to the
17 determinations specified in s. 48.38 (5) (c). After receiving that information, the
18 independent reviewing agency shall make the determinations specified in s. 48.38
19 (5) (c) and determine whether an extension of the child's placement is in the best
20 interests of the child and whether the child and the parent ~~or, guardian, or Indian~~
21 ~~custodian~~ of the child consent to the extension. If the independent reviewing agency
22 determines that the extension is in the best interests of the child and that the child
23 and the parent ~~or, guardian, or Indian custodian~~ of the child consent to the extension,
24 the independent reviewing agency shall approve, in writing, an extension of the
25 placement for a specified period of time not to exceed 6 months, stating the reason

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1 for the approval, and the agency that placed the child or that arranged the placement
2 of the child may extend the child's placement for the period of time approved. If the
3 independent reviewing agency determines that the extension is not in the best
4 interests of the child or that the child and the parent ~~or~~, guardian, or Indian
5 custodian of the child do not consent to the extension, the independent reviewing
6 agency shall, in writing, disapprove an extension of the placement, stating the
7 reason for the disapproval, and the agency that placed the child or that arranged the
8 placement of the child may not extend the placement of the child past the expiration
9 date of the voluntary placement unless the agency obtains a court order placing the
10 child in the group home after the expiration date of the voluntary placement.
11 Notwithstanding the approval of an extension under this subdivision, the child or the
12 parent ~~or~~, guardian, or Indian custodian of the child may terminate the placement
13 at any time during the extension period.

14 **SECTION 173.** 48.63 (5) (d) 6. of the statutes is amended to read:

15 48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the
16 revised permanency plan or plans shall prepare a written summary of the
17 determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall
18 provide a copy of that summary to the independent reviewing agency, the child, the
19 parent, guardian, and legal custodian of the child, ~~and~~ the operator of the group home
20 in which the child was placed, ~~and, if the child is an Indian child, the Indian child's~~
21 Indian custodian and tribe.

22 **SECTION 174.** 48.645 (1) (a) of the statutes, as affected by 2007 Wisconsin Act
23 20, is amended to read:

24 48.645 (1) (a) The child is living in a foster home or treatment foster home
25 licensed under s. 48.62 if a license is required under that section, in a foster home

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1 or treatment foster home located within the boundaries of a ~~federally recognized~~
2 ~~American Indian~~ reservation in this state and licensed by the tribal governing body
3 of the reservation, in a group home licensed under s. 48.625, in a subsidized
4 guardianship home under s. 48.62 (5), or in a residential care center for children and
5 youth licensed under s. 48.60, and has been placed in the foster home, treatment
6 foster home, group home, subsidized guardianship home, or center by a county
7 department under s. 46.215, 46.22, or 46.23, by the department, or by a ~~federally~~
8 ~~recognized American Indian tribal~~ governing body of an Indian tribe in this state
9 under an agreement with a county department under s. 46.215, 46.22, or 46.23.

10 **SECTION 175.** 48.645 (2) (a) 1. of the statutes, as affected by 2007 Wisconsin Act
11 20, is amended to read:

12 48.645 (2) (a) 1. A nonrelative who cares for the dependent child in a foster
13 home or treatment foster home having a license under s. 48.62, in a foster home or
14 treatment foster home located within the boundaries of a ~~federally recognized~~
15 ~~American Indian~~ reservation in this state and licensed by the tribal governing body
16 of the reservation or in a group home licensed under s. 48.625, a subsidized guardian
17 or interim caretaker under s. 48.62 (5) who cares for the dependent child, or a minor
18 custodial parent who cares for the dependent child, regardless of the cause or
19 prospective period of dependency. The state shall reimburse counties pursuant to the
20 procedure under s. 48.569 (2) and the percentage rate of participation set forth in s.
21 48.569 (1) (d) for aid granted under this section except that if the child does not have
22 legal settlement in the granting county, state reimbursement shall be at 100%. The
23 county department under s. 46.215, 46.22, or 46.23 or the department under s. 48.48
24 (17) shall determine the legal settlement of the child. A child under one year of age

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1 shall be eligible for aid under this subsection irrespective of any other residence
2 requirement for eligibility within this section.

3 **SECTION 176.** 48.645 (2) (a) 3. of the statutes, as affected by 2007 Wisconsin Act
4 20, is amended to read:

5 48.645 (2) (a) 3. A county or, in a county having a population of 500,000 or more,
6 the department, when the child is placed in a licensed foster home, treatment foster
7 home, group home, or residential care center for children and youth or in a subsidized
8 guardianship home by a licensed child welfare agency or by a ~~federally recognized~~
9 ~~American Indian tribal~~ governing body of an Indian tribe in this state or by its
10 designee, if the child is in the legal custody of the county department under s. 46.215,
11 46.22, or 46.23 or the department under s. 48.48 (17) or if the child was removed from
12 the home of a relative as a result of a judicial determination that continuance in the
13 home of the relative would be contrary to the child's welfare for any reason and the
14 placement is made under an agreement with the county department or the
15 department.

16 **SECTION 177.** 48.645 (2) (a) 4. of the statutes, as affected by 2007 Wisconsin Act
17 20, is amended to read:

18 48.645 (2) (a) 4. A licensed foster home, treatment foster home, group home,
19 or residential care center for children and youth or a subsidized guardianship home
20 when the child is in the custody or guardianship of the state, when the child is a ward
21 of an ~~American Indian~~ a tribal court in this state and the placement is made under
22 an agreement between the department and the ~~tribal~~ governing body of the Indian
23 tribe of the tribal court, or when the child was part of the state's direct service case
24 load and was removed from the home of a relative as a result of a judicial

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1 determination that continuance in the home of a relative would be contrary to the
2 child's welfare for any reason and the child is placed by the department.

3 **SECTION 178.** 48.645 (2) (b) of the statutes, as affected by 2007 Wisconsin Act
4 20, is amended to read:

5 48.645 (2) (b) Notwithstanding par. (a), aid under this section may not be
6 granted for placement of a child in a foster home or treatment foster home licensed
7 by a ~~federally recognized American Indian tribal~~ governing body of an Indian tribe,
8 for placement of a child in a foster home, treatment foster home, group home,
9 subsidized guardianship home, or residential care center for children and youth by
10 a ~~tribal~~ governing body of an Indian tribe or its designee, or for the placement of a
11 child who is a ward of a tribal court if the ~~tribal~~ governing body of the Indian tribe
12 of the tribal court is receiving or is eligible to receive funds from the federal
13 government for that type of placement.

14 **SECTION 179.** 48.685 (1) (br) of the statutes is repealed.

15 **SECTION 180.** 48.685 (1) (e) of the statutes is repealed.

16 **SECTION 181.** 48.685 (5) (a) of the statutes, as affected by 2007 Wisconsin Act
17 20, is amended to read:

18 48.685 (5) (a) Subject to par. (bm), the department may license to operate an
19 entity, a county department may certify under s. 48.651, a county department or a
20 child welfare agency may license under s. 48.62 and a school board may contract with
21 under s. 120.13 (14) a person who otherwise may not be licensed, certified or
22 contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may
23 employ, contract with, or permit to reside at the entity a person who otherwise may
24 not be employed, contracted with, or permitted to reside at the entity for a reason
25 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the

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1 county department, the child welfare agency, or the school board or, in the case of an
2 entity that is located within the boundaries of a reservation, to the person or body
3 designated by the Indian tribe under sub. (5d) (a) 3., by clear and convincing evidence
4 and in accordance with procedures established by the department by rule or by the
5 tribe that he or she has been rehabilitated.

6 **SECTION 182.** 48.685 (5d) (a) (intro.) of the statutes is amended to read:

7 48.685 (5d) (a) (intro.) Any Indian tribe that chooses to conduct rehabilitation
8 reviews under sub. (5) shall submit to the department a rehabilitation review plan
9 that includes all of the following:

10 **SECTION 183.** 48.685 (5d) (a) 2. of the statutes is amended to read:

11 48.685 (5d) (a) 2. The title of the person or body designated by the Indian tribe
12 to whom a request for review must be made.

13 **SECTION 184.** 48.685 (5d) (a) 3. of the statutes is amended to read:

14 48.685 (5d) (a) 3. The title of the person or body designated by the Indian tribe
15 to determine whether a person has been rehabilitated.

16 **SECTION 185.** 48.685 (5d) (a) 3m. of the statutes is amended to read:

17 48.685 (5d) (a) 3m. The title of the person or body, designated by the Indian
18 tribe, to whom a person may appeal an adverse decision made by the person specified
19 under subd. 3. and whether the Indian tribe provides any further rights to appeal.

20 **SECTION 186.** 48.685 (5d) (a) 4. of the statutes is amended to read:

21 48.685 (5d) (a) 4. The manner in which the Indian tribe will submit information
22 relating to a rehabilitation review to the department so that the department may
23 include that information in its report to the legislature required under sub. (5g).

24 **SECTION 187.** 48.685 (5d) (b) of the statutes is amended to read:

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1 48.685 (5d) (b) If, within 90 days after receiving the plan, the department does
2 not disapprove the plan, the plan shall be considered approved. If, within 90 days
3 after receiving the plan, the department disapproves the plan, the department shall
4 provide notice of that disapproval to the Indian tribe in writing, together with the
5 reasons for the disapproval. The department may not disapprove a plan unless the
6 department finds that the plan is not rationally related to the protection of clients.
7 If the department disapproves the plan, the Indian tribe may, within 30 days after
8 receiving notice of the disapproval, request that the secretary review the
9 department's decision. A final decision under this paragraph is not subject to further
10 review under ch. 227.

11 **SECTION 188.** 48.825 (1) (b) of the statutes is amended to read:

12 48.825 (1) (b) "Another jurisdiction" means a state of the United States other
13 than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any
14 territory or insular possession subject to the jurisdiction of the United States or a
15 ~~federally recognized American~~ an Indian tribe ~~or band~~.

16 **SECTION 189.** 48.83 (1) of the statutes is amended to read:

17 48.83 (1) ~~The~~ Except as provided in s. 48.028 (3) (b), the court of the county
18 where the proposed adoptive parent or child resides, upon the filing of a petition for
19 adoption or for the adoptive placement of a child, has jurisdiction over the child until
20 the petition is withdrawn, denied, or granted. Venue shall be in the county where
21 the proposed adoptive parent or child resides at the time the petition is filed. The
22 court may transfer the case to a court in the county in which the proposed adoptive
23 parents reside.

24 **SECTION 190.** 48.831 (1r) of the statutes is created to read:

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1 48.831 (1r) NOTICE. When a petition is filed under sub. (1m), the court shall
2 provide notice of the fact-finding hearing under sub. (3) to all interested parties as
3 provided in s. 48.27 (6). If the court knows or has reason to know that the child is
4 an Indian child, the court shall provide notice to the Indian child's Indian custodian,
5 if any, and tribe, if known, in the manner specified in s. 48.028 (4) (a). No hearing
6 may be held under sub. (3) until at least 10 days after receipt of the notice by the
7 Indian child's Indian custodian and tribe or until at least 25 days after receipt of the
8 notice by the U.S. secretary of the interior. On request of the Indian child's Indian
9 custodian or tribe, the court shall grant a continuance of up to 20 additional days to
10 enable the requester to prepare for the hearing.

11 **SECTION 191.** 48.831 (2) of the statutes is amended to read:

12 48.831 (2) REPORT. If the department, county department, or child welfare
13 agency files a petition, ~~it shall submit~~ the court shall order the department, county
14 department, or child welfare agency to file a report to ~~with~~ with the court containing as
15 much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably
16 ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If
17 the petition is filed by a relative or other person specified under sub. (1m) (d), the
18 court shall order the department or a child welfare agency, if the department or
19 agency consents, or a county department to file a report containing the information
20 specified in this subsection. If the child is an Indian child, the court may order the
21 department, county department, or child welfare agency, or request the tribal child
22 welfare department of the Indian child's tribe, if that department consents, to file a
23 report containing the information specified in this subsection. The department,
24 county department ~~or~~, child welfare agency, or tribal child welfare department, if

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1 that department consents, shall file the report at least 5 days before the date of the
2 fact-finding hearing on the petition.

3 **SECTION 192.** 48.831 (4) (cm) of the statutes is created to read:

4 48.831 (4) (cm) If the child is an Indian child who is in the custody of an Indian
5 custodian, the court may not remove the child from the custody of the Indian
6 custodian under par. (c) unless the court finds by clear and convincing evidence,
7 including the testimony of one or more qualified expert witnesses, that continued
8 custody of the Indian child by the Indian custodian is likely to result in serious
9 emotional or physical damage to the child under s. 48.028 (4) (d) 1. and that the
10 department, county department, or child welfare agency has made active efforts
11 under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
12 efforts have proved unsuccessful. In placing an Indian child following a transfer of
13 guardianship and custody under par. (b) or (c), the custodian appointed under par.
14 (b) or (c) shall comply with the order of placement preference under s. 48.028 (7) (b)
15 or, if applicable, s. 48.028 (7) (c), unless there is good cause, as described in s. 48.028
16 (7) (e), for departing from that order.

17 **SECTION 193.** 48.833 of the statutes, as affected by 2005 Wisconsin Act 293, is
18 amended to read:

19 **48.833 Placement of children for adoption by the department, county**
20 **departments, and child welfare agencies.** The department, a county
21 department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under
22 s. 48.60 may place a child for adoption in a licensed foster home or a licensed
23 treatment foster home without a court order if the department, county department,
24 or child welfare agency is the guardian of the child or makes the placement at the
25 request of another agency that is the guardian of the child and if the proposed

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1 adoptive parents have completed the preadoption preparation required under s.
2 48.84 (1) or the department, county department, or child welfare agency determines
3 that the proposed adoptive parents are not required to complete that preparation.
4 In placing an Indian child for adoption under this section, the department, county
5 department, or child welfare agency shall comply with the order of placement
6 preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the
7 department, county department, or child welfare agency finds good cause, as
8 described in s. 48.028 (7) (e), for departing from that order. When a child is placed
9 under this section in a licensed foster home or a licensed treatment foster home for
10 adoption, the department, county department, or child welfare agency making the
11 placement shall enter into a written agreement with the proposed adoptive parent,
12 which shall state the date on which the child is placed in the licensed foster home or
13 licensed treatment foster home for adoption by the proposed adoptive parent.

14 **SECTION 194.** 48.837 (2) (e) of the statutes is created to read:

15 48.837 (2) (e) If the child is an Indian child, the names and addresses of the
16 Indian child's Indian custodian, if any, and tribe, if known.

17 **SECTION 195.** 48.837 (4) (c) of the statutes is amended to read:

18 48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the
19 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the
20 proposed adoptive placement, to interview each petitioner, to provide counseling if
21 requested, and to report its recommendation to the court at least 5 days before the
22 hearing on the petition. If a licensed child welfare agency or, in the case of an Indian
23 child, the tribal child welfare department of the Indian child's tribe has investigated
24 the proposed adoptive placement and interviewed the petitioners, the court may
25 accept a report and recommendation from the child welfare agency or tribal child

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1 welfare department in place of the court-ordered report required under this
2 paragraph. In reporting its recommendations under this paragraph with respect to
3 an Indian child, the department, a county department, or a child welfare agency shall
4 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
5 s. 48.028 (7) (c), unless the department, county department, or child welfare agency
6 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

7 **SECTION 196.** 48.837 (4) (d) of the statutes is amended to read:

8 48.837 (4) (d) May, at the request of a petitioning parent, or on its own motion
9 after ordering the child taken into custody under s. 48.19 (1) (c), order the
10 department or a county department under s. 48.57 (1) (e) or (hm) to place the child,
11 pending the hearing on the petition, in any home licensed under s. 48.62 except the
12 home of the proposed adoptive parents or a relative of the proposed adoptive parents.
13 In placing an Indian child under this paragraph, the department or county
14 department shall comply with the order of placement preference under s. 48.028 (7)
15 (b) or, if applicable, s. 48.028 (7) (c), unless the department or county department
16 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

17 **SECTION 197.** 48.837 (6) (c) of the statutes is amended to read:

18 48.837 (6) (c) After the hearing on the petition under sub. (2), the court shall
19 make findings on the allegations of the petition and the report ordered under sub.
20 (4) (c) and make a conclusion as to whether placement in the home is in the best
21 interest of the child. In determining whether placement of an Indian child in the
22 home is in the best interest of the Indian child, the court shall comply with the order
23 of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless
24 the court finds good cause, as described in s. 48.028 (7) (e), for departing from that
25 order.

SENATE BILL 572**SECTION 198**

1 **SECTION 198.** 48.85 (1) of the statutes is amended to read:

2 48.85 (1) At least 10 days prior to the hearing, the guardian shall file its
3 recommendation with the court. In making a recommendation under this subsection
4 with respect to an Indian child, the guardian shall comply with the order of
5 placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c).

6 **SECTION 199.** 48.88 (2) (a) (intro.) of the statutes is amended to read:

7 48.88 (2) (a) (intro.) Except as provided under ~~par.~~ pars. (am) and (c), when a
8 petition to adopt a child is filed, the court shall order an investigation to determine
9 whether the child is a proper subject for adoption and whether the petitioner's home
10 is suitable for the child. The court shall order one of the following to conduct the
11 investigation:

12 **SECTION 200.** 48.88 (2) (ag) of the statutes is created to read:

13 48.88 (2) (ag) If the child is an Indian child, in lieu of ordering an investigation
14 under par. (a), the court may request the tribal child welfare department of the
15 Indian child's tribe, if that department consents, to conduct the investigation.

16 **SECTION 201.** 48.88 (2) (b) of the statutes is amended to read:

17 48.88 (2) (b) The agency or tribal child welfare department making the
18 investigation shall file its report with the court at least 10 days before the hearing
19 unless the time is reduced for good cause shown by the petitioner. In reporting on
20 an investigation of the proposed adoptive home of an Indian child, the agency shall
21 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
22 s. 48.028 (7) (c), unless the agency finds good cause, as described in s. 48.028 (7) (e),
23 for departing from that order. The report shall be part of the record of the
24 proceedings.

25 **SECTION 202.** 48.89 (1) of the statutes is amended to read:

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1 48.89 (1) The recommendation of the department is required for the adoption
2 of a child if the child is not under the guardianship of a county department under s.
3 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a
4 recommendation under this subsection with respect to an Indian child, the
5 department shall comply with the order of placement preference under s. 48.028 (7)
6 (a) or, if applicable, s. 48.028 (7) (c), unless the department finds good cause, as
7 described in s. 48.028 (7) (e), for departing from that order.

8 **SECTION 203.** 48.91 (3) of the statutes is amended to read:

9 48.91 (3) If after the hearing and a study of the report required by s. 48.88 and
10 the recommendation required by s. 48.841 or 48.89, the court is satisfied that the
11 necessary consents or recommendations have been filed and that the adoption is in
12 the best interests of the child, the court shall make an order granting the adoption.
13 In determining whether the adoption is in the best interests of an Indian child, the
14 court shall comply with the order of placement preference under s. 48.028 (7) (a) or,
15 if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s.
16 48.028 (7) (e), for departing from that order. The order may change the name of the
17 minor to that requested by petitioners.

18 **SECTION 204.** 48.93 (1d) of the statutes, as affected by 2007 Wisconsin Act 20,
19 is amended to read:

20 48.93 (1d) All records and papers pertaining to an adoption proceeding shall
21 be kept in a separate locked file and may not be disclosed except under sub. (1g) or,
22 (1r), or (1v), s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of
23 the court for good cause shown.

24 **SECTION 205.** 48.93 (1v) of the statutes is created to read:

SENATE BILL 572**SECTION 205**

1 48.93 (1v) (a) At the time a court enters an order granting adoption of an Indian
2 child, the court shall provide the U.S. secretary of the interior with the information
3 specified in s. 48.028 (9) (a) and (b).

4 (b) At the request of an Indian adoptee who is 18 years of age or older, the court
5 that entered the order granting adoption of the adoptee shall provide or arrange to
6 provide the adoptee with the information specified in s. 48.028 (9) (c).

7 **SECTION 206.** 48.977 (4) (a) 1. of the statutes is amended to read:

8 48.977 (4) (a) 1. The child or the child's guardian ~~or~~ legal custodian, or Indian
9 custodian.

10 **SECTION 207.** 48.977 (4) (b) 6. of the statutes is amended to read:

11 48.977 (4) (b) 6. A statement of whether the child may be subject to the federal
12 Indian ~~child welfare act~~ Child Welfare Act, 25 USC 1911 to 1963, and, if the child may
13 be subject to that act, the names and addresses of the child's Indian custodian, if any,
14 and Indian tribe, if known.

15 **SECTION 208.** 48.977 (4) (c) 1. j. of the statutes is created to read:

16 48.977 (4) (c) 1. j. If the child is an Indian child, the Indian child's Indian
17 custodian, if any, and tribe, if known.

18 **SECTION 209.** 48.977 (4) (c) 2. of the statutes is amended to read:

19 48.977 (4) (c) 2. ~~Service~~ Except as provided in subd. 2m., service shall be made
20 by 1st class mail at least 7 days before the hearing or by personal service at least 7
21 days before the hearing or, if with reasonable diligence a party specified in subd. 1.
22 cannot be served by mail or personal service, service shall be made by publication of
23 a notice published as a class 1 notice under ch. 985. In determining which newspaper
24 is likely to give notice as required under s. 985.02 (1), the petitioner shall consider

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1 the residence of the party, if known, or the residence of the relatives of the party, if
2 known, or the last-known location of the party.

3 **SECTION 210.** 48.977 (4) (c) 2m. of the statutes is created to read:

4 48.977 (4) (c) 2m. If the petitioner knows or has reason to know that the child
5 is an Indian child, service under subd. 2. to the Indian child's parent, Indian
6 custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). No
7 hearing may be held under par. (cm) until at least 10 days after receipt of service by
8 the Indian child's parent, Indian custodian, and tribe or until at least 25 days after
9 receipt of service by the U.S. secretary of the interior. On request of the Indian child's
10 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
11 additional days to enable the requester to prepare for the hearing.

12 **SECTION 211.** 48.977 (4) (g) 4. of the statutes is created to read:

13 48.977 (4) (g) 4. If the child is an Indian child, the order of placement preference
14 under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good
15 cause, as described in s. 48.028 (7) (e), for departing from that order.

16 **SECTION 212.** 48.978 (2) (b) 11. of the statutes is amended to read:

17 48.978 (2) (b) 11. A statement of whether the child may be subject to the federal
18 Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to
19 that act, the names and addresses of the child's Indian custodian, if any, and Indian
20 tribe, if known.

21 **SECTION 213.** 48.981 (1) (cs) of the statutes is renumbered 48.02 (8g) and
22 amended to read:

23 48.02 (8g) "Indian child" means any unmarried person who is under the age
24 of 18 years and is affiliated with an Indian tribe ~~or band~~ in any of the following ways:

25 1. As a member of the Indian tribe ~~or band~~.

SENATE BILL 572**SECTION 213**

1 2. As a person who is both eligible for membership in the Indian tribe ~~or band~~
2 and is the biological child of a member of the Indian tribe ~~or band~~.

3 **SECTION 214.** 48.981 (1) (ct) of the statutes is amended to read:

4 48.981 (1) (ct) “Indian unborn child” means an unborn child who, when born,
5 may be eligible for affiliation with an Indian tribe ~~or band~~ in any of the following
6 ways:

7 1. As a member of the Indian tribe ~~or band~~.

8 2. As a person who is both eligible for membership in the Indian tribe ~~or band~~
9 and the biological child of a member of the Indian tribe ~~or band~~.

10 **SECTION 215.** 48.981 (1) (i) of the statutes is amended to read:

11 48.981 (1) (i) “Tribal agent” means the person designated under 25 CFR 23.12
12 by an Indian tribe ~~or band~~ to receive notice of involuntary child custody proceedings
13 under the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901
14 to 1963.

15 **SECTION 216.** 48.981 (3) (bm) (intro.) of the statutes is amended to read:

16 48.981 (3) (bm) *Notice of report to Indian tribal agent ~~tribe~~*. (intro.) In a county
17 ~~which~~ that has wholly or partially within its boundaries a ~~federally recognized~~
18 Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe,
19 if a county department ~~which~~ that receives a report under par. (a) pertaining to a
20 child or unborn child knows or has reason to know that the child is an Indian child
21 who resides in the county or that the unborn child is an Indian unborn child whose
22 expectant mother resides in the county, the county department shall provide notice,
23 which shall consist only of the name and address of the Indian child or expectant
24 mother and the fact that a report has been received about that Indian child or Indian
25 unborn child, within 24 hours to one of the following:

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1 **SECTION 217.** 48.981 (3) (bm) 1. of the statutes is amended to read:

2 48.981 (3) (bm) 1. If the county department knows with which Indian tribe or
3 ~~band~~ the child is affiliated, or with which Indian tribe or ~~band~~ the Indian unborn
4 child, when born, may be eligible for affiliation, and it the Indian tribe is a Wisconsin
5 ~~tribe or band, the tribal agent of that tribe or band~~ Indian tribe, the director of the
6 tribal child welfare department.

7 **SECTION 218.** 48.981 (3) (bm) 2. of the statutes is amended to read:

8 48.981 (3) (bm) 2. If the county department ~~does not know~~ knows with which
9 Indian tribe or ~~band~~ the child is affiliated, or with which Indian tribe or ~~band~~ the
10 Indian unborn child, when born, may be eligible for affiliation, ~~or the child or~~
11 ~~expectant mother is not affiliated with~~ and the Indian tribe is not a Wisconsin Indian
12 ~~tribe or band, the tribal agent serving the reservation or Ho-Chunk service area~~
13 ~~where the child or expectant mother resides~~ of that Indian tribe.

14 **SECTION 219.** 48.981 (3) (bm) 3. of the statutes is amended to read:

15 48.981 (3) (bm) 3. If neither subd. 1. nor 2. applies, any tribal agent serving a
16 ~~reservation or Ho-Chunk service area in the county~~ department does not know with
17 which Indian tribe the Indian child is affiliated, or with which Indian tribe the Indian
18 unborn child, when born, may be eligible for affiliation, the secretary of the U.S.
19 department of the interior.

20 **SECTION 220.** 48.981 (7) (a) 2. of the statutes is amended to read:

21 48.981 (7) (a) 2. Appropriate staff of an agency or a tribal social services child
22 welfare department.

23 **SECTION 221.** 48.981 (7) (a) 10m. of the statutes is amended to read:

24 48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a
25 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises

SENATE BILL 572**SECTION 221**

1 jurisdiction over children and unborn children alleged to be in need of protection or
2 services for use in proceedings in which abuse or neglect of the child who is the
3 subject of the report or record or abuse of the unborn child who is the subject of the
4 report or record is an issue.

5 **SECTION 222.** 48.981 (7) (a) 10r. of the statutes is amended to read:

6 48.981 (7) (a) 10r. A tribal court, or other adjudicative body authorized by a
7 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
8 jurisdiction over children alleged to be in need of protection or services for use in
9 proceedings in which an issue is the substantial risk of abuse or neglect of a child
10 who, during the time period covered by the report or record, was in the home of the
11 child who is the subject of the report or record.

12 **SECTION 223.** 48.981 (7) (a) 11m. of the statutes is amended to read:

13 48.981 (7) (a) 11m. An attorney representing the interests of an Indian tribe
14 ~~or band~~ in proceedings under subd. 10m. or 10r., of an Indian child in proceedings
15 under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd.
16 10m.

17 **SECTION 224.** 48.981 (7) (am) of the statutes is amended to read:

18 48.981 (7) (am) Notwithstanding par. (a) (intro.), a tribal agent who receives
19 notice under sub. (3) (bm) may disclose the notice to a tribal ~~social services~~ child
20 welfare department.

21 **SECTION 225.** 48.981 (8) (a) of the statutes, as affected by 2007 Wisconsin Act
22 20, is amended to read:

23 48.981 (8) (a) The department, the county departments, and a licensed child
24 welfare agency under contract with the department in a county having a population
25 of 500,000 or more to the extent feasible shall conduct continuing education and

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1 training programs for staff of the department, the county departments, licensed
2 child welfare agencies under contract with the department or a county department,
3 law enforcement agencies, and the tribal ~~social services~~ child welfare departments,
4 persons and officials required to report, the general public, and others as
5 appropriate. The programs shall be designed to encourage reporting of child abuse
6 and neglect and of unborn child abuse, to encourage self-reporting and voluntary
7 acceptance of services and to improve communication, cooperation, and coordination
8 in the identification, prevention, and treatment of child abuse and neglect and of
9 unborn child abuse. Programs provided for staff of the department, county
10 departments, and licensed child welfare agencies under contract with county
11 departments or the department whose responsibilities include the investigation or
12 treatment of child abuse or neglect shall also be designed to provide information on
13 means of recognizing and appropriately responding to domestic abuse, as defined in
14 s. 49.165 (1) (a). The department, the county departments, and a licensed child
15 welfare agency under contract with the department in a county having a population
16 of 500,000 or more shall develop public information programs about child abuse and
17 neglect and about unborn child abuse.

18 **SECTION 226.** 48.983 (1) (b) 1. b. of the statutes, as affected by 2007 Wisconsin
19 Act 20, is amended to read:

20 48.983 (1) (b) 1. b. An Indian child who has been the subject of a report under
21 s. 48.981 about which an Indian tribe that has received a grant under this section has
22 received notice, including but not limited to notice provided to a tribal agent under
23 s. 48.981 (3) (bm), and with respect to whom an individual designated by the Indian
24 tribe has determined that all of the conditions in subd. 2. exist.

SENATE BILL 572**SECTION 227**

1 **SECTION 227.** 48.983 (1) (d) of the statutes, as affected by 2007 Wisconsin Act
2 20, is repealed.

3 **SECTION 228.** 48.983 (1) (e) of the statutes, as affected by 2007 Wisconsin Act
4 20, is repealed.

5 **SECTION 229.** 48.983 (1) (h) of the statutes, as affected by 2007 Wisconsin Act
6 20, is repealed.

7 **SECTION 230.** 806.245 (1m) of the statutes is created to read:

8 806.245 (1m) The public acts, records, and judicial proceedings of any Indian
9 tribe that are applicable to an Indian child custody proceeding, as defined in s. 48.028
10 (2) (d), or an Indian juvenile child custody proceeding, as defined in s. 938.028 (2) (b),
11 shall be given full faith and credit by the state as provided in s. 48.028 (3) (f) or
12 938.028 (3) (f).

13 **SECTION 231.** 822.015 of the statutes is amended to read:

14 **822.015 Custody of Indian children.** ~~The Indian child welfare act~~ federal
15 Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes the provisions of this
16 chapter in any child custody proceeding governed by that act, except that in any case
17 in which this chapter provides a higher standard of protection for the rights of an
18 Indian child's parent or Indian custodian than the rights provided under that act, the
19 court shall apply the standard under this chapter.

20 **SECTION 232.** 938.02 (8d) of the statutes is created to read:

21 938.02 (8d) “Indian” means any person who is a member of an Indian tribe or
22 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
23 1606.

24 **SECTION 233.** 938.02 (8g) of the statutes is created to read:

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1 938.02 (8g) “Indian juvenile” means an unmarried person who is under 18
2 years of age and who is affiliated with an Indian tribe in any of the following ways:

3 (a) As a member of the Indian tribe.

4 (b) As a person who is eligible for membership in the Indian tribe and is the
5 biological child of a member of the Indian tribe.

6 **SECTION 234.** 938.02 (8m) of the statutes is created to read:

7 938.02 (8m) “Indian juvenile’s tribe” means one of the following:

8 (a) The Indian tribe in which an Indian juvenile is a member or eligible for
9 membership.

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

13 **SECTION 235.** 938.02 (8p) of the statutes is created to read:

14 938.02 (8p) “Indian custodian” means an Indian person who has legal custody
15 of an Indian juvenile under tribal law or custom or under state law or to whom
16 temporary physical care, custody, and control has been transferred by the parent of
17 the juvenile.

18 **SECTION 236.** 938.02 (8r) of the statutes is created to read:

19 938.02 (8r) “Indian tribe” means any Indian tribe, band, nation, or other
20 organized group or community of Indians that is recognized as eligible for the
21 services provided to Indians by the U.S. secretary of the interior because of Indian
22 status, including any Alaska native village, as defined in 43 USC 1602 (c).

23 **SECTION 237.** 938.02 (9m) of the statutes is renumbered 938.02 (8b).

24 **SECTION 238.** 938.02 (10m) of the statutes is amended to read:

SENATE BILL 572**SECTION 238**

1 938.02 (10m) “Juvenile”, when used without further qualification, means a
2 person who is less than 18 years of age, except that for purposes of investigating or
3 prosecuting a person who is alleged to have violated a state or federal criminal law
4 or any civil law or municipal ordinance, “juvenile” does not include a person who has
5 attained 17 years of age.

6 **SECTION 239.** 938.02 (12m) of the statutes is amended to read:

7 938.02 (12m) “Off-reservation trust land” means land in this state that is held
8 in trust by the federal government for the benefit of ~~a~~ an Indian tribe or ~~an American~~
9 Indian individual and that is located outside the boundaries of ~~a~~ an Indian tribe’s
10 reservation.

11 **SECTION 240.** 938.02 (13) of the statutes is amended to read:

12 938.02 (13) “Parent” means either a biological parent, a husband who has
13 consented to the artificial insemination of his wife under s. 891.40, or a parent by
14 adoption. If the juvenile is a nonmarital child who is not adopted or whose parents
15 do not subsequently intermarry under s. 767.803, “parent” includes a person
16 acknowledged under s. 767.805 or a substantially similar law of another state or
17 adjudicated to be the biological father. “Parent” does not include any person whose
18 parental rights have been terminated. For purposes of the application of s. 938.028
19 and the federal Indian Child Welfare Act, 26 USC 1901 to 1963, “parent” includes an
20 Indian person who has lawfully adopted an Indian juvenile, including an adoption
21 under tribal law or custom, but does not include a parent by adoption who is not an
22 Indian person.

23 **SECTION 241.** 938.02 (15) of the statutes is amended to read:

24 938.02 (15) “Relative” means a parent, stepparent, brother, sister, stepbrother,
25 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd

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1 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
2 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
3 marriage, or legal adoption, or the spouse of any person named in this subsection,
4 even if the marriage is terminated by death or divorce. “Relative” also includes, in
5 the case of an Indian juvenile, an extended family member, as defined in s. 938.028
6 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law
7 or custom.

8 **SECTION 242.** 938.02 (15c) of the statutes is repealed and recreated to read:

9 938.02 (15c) “Reservation” means Indian country, as defined in 18 USC 1151,
10 or any land not covered under that section to which the title is either held by the
11 United States in trust for the benefit of an Indian tribe or individual or held by an
12 Indian tribe or individual, subject to a restriction by the United States against
13 alienation.

14 **SECTION 243.** 938.02 (18g) of the statutes is repealed.

15 **SECTION 244.** 938.02 (18j) of the statutes is created to read:

16 938.02 (18j) “Tribal court” means a court that has jurisdiction over juvenile
17 custody proceedings, and that is either a court of Indian offenses or a court
18 established and operated under the code or custom of an Indian tribe, or any other
19 administrative body of an Indian tribe that is vested with authority over Indian
20 juvenile custody proceedings.

21 **SECTION 245.** 938.028 of the statutes is repealed and recreated to read:

22 **938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY.** In Indian
23 juvenile custody proceedings, the best interests of the Indian juvenile shall be
24 determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to
25 1963. It is the policy of this state to do all of the following:

SENATE BILL 572**SECTION 245**

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

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

5 1. Establishing minimum standards for the removal of Indian juveniles from
6 their families and the placement of those juveniles in out-of-home care placements
7 that will reflect the unique value of Indian culture.

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

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

17 (a) "Extended family member" means a person who is defined as a member of
18 an Indian juvenile's extended family by the law or custom of the Indian juvenile's
19 tribe or, in the absence of such a law or custom, a person who has attained the age
20 of 18 years and who is the Indian juvenile's grandparent, aunt, uncle, brother, sister,
21 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

22 (b) "Indian juvenile custody proceeding" means a proceeding under s. 938.13
23 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC
24 1901 to 1963, in which an out-of-home care placement may occur.

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1 (c) “Out-of-home care placement” means the removal of an Indian juvenile
2 from his or her parent or Indian custodian for temporary placement in a foster home,
3 treatment foster home, group home, residential care center for children and youth,
4 or shelter care facility, in the home of a relative other than a parent, or in the home
5 of a guardian, from which placement the parent or Indian custodian cannot have the
6 juvenile returned upon demand.

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

8 1. A member of the Indian juvenile’s tribe recognized by the Indian juvenile’s
9 tribal community as knowledgeable regarding the tribe’s customs relating to family
10 organization or child-rearing practices.

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

13 3. A professional person having substantial education and experience in the
14 person’s professional speciality and having extensive knowledge of the customs,
15 traditions, and values of the Indian juvenile’s tribe relating to family organization
16 and child-rearing practices.

17 4. A layperson having substantial experience in the delivery of juvenile and
18 family services to Indians and substantial knowledge of the prevailing social and
19 cultural standards and child-rearing practices of the Indian juvenile’s tribe.

20 **(3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS.** (a) *Applicability.*
21 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
22 to any Indian juvenile custody proceeding regardless of whether the Indian juvenile
23 is in the legal custody or physical custody of an Indian parent, Indian custodian,
24 extended family member, or other person at the commencement of the proceeding
25 and whether the Indian juvenile resides or is domiciled on or off of a reservation. A

SENATE BILL 572**SECTION 245**

1 court assigned to exercise jurisdiction under this chapter may not determine
2 whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963,
3 apply to an Indian juvenile custody proceeding based on whether the Indian juvenile
4 is part of an existing Indian family.

5 (b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive
6 jurisdiction over any Indian juvenile custody proceeding involving an Indian
7 juvenile who resides or is domiciled within the reservation of the tribe, except when
8 that jurisdiction is otherwise vested in the state by federal law and except as
9 provided in subd. 2. If an Indian juvenile is a ward of a tribal court, the Indian tribe
10 shall retain exclusive jurisdiction regardless of the residence or domicile of the
11 juvenile.

12 2. Subdivision 1. does not prevent an Indian juvenile who resides or is domiciled
13 within a reservation, but who is temporarily located off the reservation, from being
14 taken into and held in custody under ss. 938.19 to 938.21 in order to prevent
15 imminent physical harm or damage to the Indian juvenile. The person taking the
16 Indian juvenile into custody or the intake worker shall immediately release the
17 Indian juvenile from custody upon determining that holding the Indian juvenile in
18 custody is no longer necessary to prevent imminent physical damage or harm to the
19 Indian juvenile and shall expeditiously restore the Indian juvenile to his or her
20 parent or Indian custodian, release the Indian juvenile to an appropriate official of
21 the Indian juvenile's tribe, or initiate an Indian juvenile custody proceeding, as may
22 be appropriate.

23 (c) *Transfer of proceedings to tribe.* In any Indian juvenile custody proceeding
24 under this chapter involving an out-of-home placement of an Indian juvenile who
25 is not residing or domiciled within the reservation of the Indian juvenile's tribe, the

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1 court assigned to exercise jurisdiction under this chapter shall, upon the petition of
2 the Indian juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the
3 jurisdiction of the tribe unless any of the following applies:

4 1. A parent of the Indian juvenile objects to the transfer.

5 2. The Indian juvenile's tribe does not have a tribal court or tribal court of the
6 Indian juvenile's tribe declines jurisdiction.

7 3. The court determines that good cause exists to deny the transfer. The court
8 may determine that good cause exists to deny the transfer only if the person opposing
9 the transfer shows to the satisfaction of the court any of the following:

10 a. That the Indian juvenile is 12 years of age or over and objects to the transfer.

11 b. That the evidence or testimony necessary to decide the case cannot be
12 presented in tribal court without undue hardship to the parties or the witnesses and
13 that the tribal court is unable to mitigate the hardship by making arrangements to
14 receive the evidence or testimony by use of telephone or live audiovisual means, by
15 hearing the evidence or testimony at a location that is convenient to the parties and
16 witnesses, or by use of other means permissible under the tribal court's rules of
17 evidence.

18 (d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction
19 under this chapter determines that the petitioner in an Indian juvenile custody
20 proceeding has improperly removed the Indian juvenile from the custody of his or her
21 parent or Indian custodian or has improperly retained custody of the Indian juvenile
22 after a visit or other temporary relinquishment of custody, the court shall decline
23 jurisdiction over the petition and immediately return the Indian juvenile to the
24 custody of the parent or Indian custodian, unless the court determines that returning

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1 the Indian juvenile to his or her parent or Indian custodian would subject the Indian
2 juvenile to substantial and immediate danger or the threat of that danger.

3 (e) *Intervention.* An Indian juvenile's Indian custodian or tribe may intervene
4 at any point in an Indian juvenile custody proceeding under this chapter.

5 (f) *Full faith and credit.* The state shall give full faith and credit to the public
6 acts, records, and judicial proceedings of any Indian tribe that are applicable to an
7 Indian juvenile custody proceeding to the same extent that the state gives full faith
8 and credit to the public acts, records, and judicial proceedings of any other
9 governmental entity.

10 **(4) COURT PROCEEDINGS.** (a) *Notice.* In any involuntary proceeding under s.
11 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of a juvenile
12 whom the court knows or has reason to know is an Indian juvenile, the court or party
13 seeking the out-of-home care placement shall, for the first hearing at the plea,
14 fact-finding, and dispositional stages of the proceeding, notify the Indian juvenile's
15 parent, Indian custodian, and tribe, by certified mail of the pending proceeding and
16 of their right to intervene in the proceeding. Notice of subsequent hearings in a stage
17 of a proceeding shall be in writing and may be given by mail, personal delivery, or
18 facsimile transmission, but not by electronic mail. If the identity or location of the
19 Indian juvenile's parent, Indian custodian, or tribe cannot be determined, that notice
20 shall be given to the U.S. secretary of the interior in like manner. The next hearing
21 in the proceeding may not be held until at least 10 days after receipt of the notice by
22 the parent, Indian custodian, and tribe or until at least 25 days after receipt of the
23 notice by the U.S. secretary of the interior. On request of the parent, Indian
24 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
25 to enable the requester to prepare for that hearing.

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1 (b) *Appointment of counsel.* Whenever an Indian juvenile is the subject of a
2 proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian
3 juvenile from his or her home or the placement of the Indian juvenile in an
4 out-of-home care placement, the Indian juvenile's parent or Indian custodian shall
5 have the right to be represented by court-appointed counsel as provided in s. 938.23
6 (2g). The court may also, in its discretion, appoint counsel for the Indian juvenile
7 under s. 938.23 (1m) or (3) if the court finds that the appointment is in the best
8 interests of the Indian juvenile.

9 (c) *Examination of reports and other documents.* Each party to a proceeding
10 under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of an
11 Indian juvenile shall have the right to examine all reports or other documents filed
12 with the court upon which any decision with respect to the out-of-home care
13 placement may be based.

14 (d) *Out-of-home care placement; serious damage and active efforts.* The court
15 may not order an Indian juvenile who is in need of protection or services under s.
16 938.13 (4), (6), (6m), or (7) to be removed from the Indian juvenile's home and placed
17 in an out-of-home care placement unless all of the following occur:

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

22 2. The court finds by clear and convincing evidence that active efforts, as
23 described in par. (f), have been made to provide remedial services and rehabilitation
24 programs designed to prevent the breakup of the Indian family and that those efforts

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1 have proved unsuccessful. The court shall make that finding notwithstanding that
2 a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies.

3 (e) *Qualified expert witness; order of preference.* A qualified expert witness
4 shall be chosen in the following order of preference:

5 1. A member of the Indian juvenile's tribe described in sub. (2) (d) 1.

6 2. A member of another tribe described in sub. (2) (d) 2.

7 3. A professional person described in sub. (2) (d) 3.

8 4. A layperson described described in sub. (2) (d) 4.

9 (f) *Active efforts standard.* The court may not order an Indian juvenile to be
10 placed in an out-of-home care placement unless the evidence of active efforts under
11 par. (d) 2. shows that there has been a vigorous and concerted level of case work
12 beyond the level that typically constitutes reasonable efforts, as described in s.
13 938.355 (2c). The active efforts shall be made in a manner that takes into account
14 the prevailing social and cultural values, conditions, and way of life of the Indian
15 juvenile's tribe and that utilizes the available resources of the Indian juvenile's tribe,
16 tribal and other Indian child welfare agencies, extended family members of the
17 Indian juvenile, and other individual Indian caregivers. The court's consideration
18 of whether active efforts were made under par. (d) 2. shall include whether all of the
19 following activities were conducted:

20 1. The Indian juvenile's tribe was requested to convene traditional and
21 customary support, actions, and services to resolve the Indian family's issues.

22 2. Representatives of the Indian juvenile's tribe were identified, notified, and
23 invited to participate in all aspects of the Indian juvenile custody proceeding at the
24 earliest possible point in the proceeding.

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1 3. Extended family members of the Indian juvenile were consulted to identify
2 and provide family structure and support for the Indian juvenile.

3 4. Frequent visitation was made to the Indian juvenile's home.

4 5. Contact was made with extended family members of the Indian juvenile to
5 assure appropriate cultural connections.

6 6. All family preservation alternatives appropriate to the Indian juvenile's
7 tribe were exhausted.

8 7. Community resources offering housing, financial, and transportation
9 assistance were identified, information about those resources was provided to the
10 Indian family, and the Indian family was actively assisted in accessing those
11 resources.

12 **(5) INVALIDATION OF ACTION.** Any Indian juvenile in need of protection or services
13 under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out-of-home care
14 placement, any parent or Indian custodian from whose custody that Indian juvenile
15 was removed, or the Indian juvenile's tribe may move the court to invalidate that
16 out-of-home care placement on the grounds that the out-of-home care placement
17 was made in violation of sub. (3) or (4) or 25 USC 1911 or 1912. If the court finds that
18 those grounds exist, the court shall invalidate the out-of-home care placement.

19 **(6) PLACEMENT OF INDIAN JUVENILE.** (a) *Out-of-home care placement;*
20 *preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4),
21 (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in
22 the least restrictive setting that most approximates a family, that meets the Indian
23 juvenile's special needs, if any, and that is within reasonable proximity to the Indian
24 juvenile's home, taking into account those special needs. Subject to pars. (b) to (d),
25 in placing such an Indian juvenile in an out-of-home care placement, preference

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1 shall be given, in the absence of good cause, as described in par. (d), to the contrary,
2 to a placement in one of the following, in the order of preference listed:

3 1. The home of an extended family member of the Indian juvenile.

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

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

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

11 (b) *Tribal or personal preferences.* If the Indian juvenile's tribe has established,
12 by resolution, an order of preference that is different from the order specified in par.
13 (a), the order of preference established by that tribe shall be followed, in the absence
14 of good cause, as described in par. (d), to the contrary, so long as the placement is the
15 least restrictive setting appropriate for the Indian juvenile's needs as specified in
16 par. (a). When appropriate, the preference of the Indian juvenile or parent shall be
17 considered, and, when a parent who has consented to the placement evidences a
18 desire for anonymity, that desire shall be given weight, in determining the
19 placement.

20 (c) *Social and cultural standards.* The standards to be applied in meeting the
21 placement preference requirements of this subsection shall be the prevailing social
22 and cultural standards of the Indian community in which the Indian juvenile's
23 parents or extended family members reside or with which the Indian juvenile's
24 parents or extended family members maintain social and cultural ties.

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1 (d) *Good cause.* 1. Whether there is good cause to depart from the order of
2 placement preference under par. (a) or (b) shall be determined based on any one or
3 more of the following considerations:

4 a. When appropriate, the request of the Indian juvenile's parent or, if the Indian
5 juvenile is of sufficient age and developmental level to make an informed decision,
6 the Indian juvenile, unless the request is made for the purpose of avoiding the
7 application of this section and the federal Indian Child Welfare Act, 26 USC 1901 to
8 1963.

9 b. Any extraordinary physical, mental, or emotional health needs of the Indian
10 juvenile requiring highly specialized treatment services as established by the
11 testimony of an expert witness, including a qualified expert witness. The length of
12 time that an Indian juvenile has been in a placement does not, in itself, constitute
13 an extraordinary emotional health need.

14 c. The unavailability of a suitable placement for the Indian juvenile after active
15 efforts, as described in sub. (4) (f), have been made to place the Indian juvenile in the
16 order of preference under par. (a) or (b).

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

19 (e) *Report of placement.* The department of health and family services, a county
20 department, or a child welfare agency shall maintain a record of each out-of-home
21 care placement made of an Indian juvenile who is in need of protection or services
22 under s. 938.13 (4), (6), (6m), or (7), evidencing the efforts made to comply with the
23 placement preference requirements specified in this subsection, and shall make that
24 record available at any time on the request of the U.S. secretary of the interior or the
25 Indian juvenile's tribe.

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1 **(7) RETURN OF CUSTODY; REMOVAL FROM OUT-OF-HOME CARE PLACEMENT.** If an
2 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
3 or (7) is removed from an out-of-home care placement for the purpose of placing the
4 Indian juvenile in another out-of-home care placement, a preadoptive placement,
5 as defined in s. 48.028 (2) (f), or an adoptive placement, as defined in s. 48.028 (2) (a),
6 the placement shall be made in accordance with this section and s. 48.028. Removal
7 of such an Indian juvenile from an out-of-home care placement for the purpose of
8 returning the Indian juvenile to the home of the parent or Indian custodian from
9 whose custody the Indian juvenile was originally removed is not subject to this
10 section.

11 **(8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE.** The federal Indian Child
12 Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian juvenile
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 juvenile's
15 parent or Indian custodian than the rights provided under that act, the court shall
16 apply the standard under this chapter.

17 **(9) 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 246.** 938.13 (intro.) of the statutes is amended to read:

21 **938.13 Jurisdiction over juveniles alleged to be in need of protection**
22 **or services.** (intro.) ~~The Except as provided in s. 938.028 (3), the~~ court has exclusive
23 original jurisdiction over a juvenile alleged to be in need of protection or services
24 which can be ordered by the court if any of the following conditions applies:

25 **SECTION 247.** 938.15 of the statutes is amended to read:

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1 **938.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
2 Except as provided in s. 938.028 (3), nothing in this chapter deprives another court
3 of the right to determine the legal custody juvenile by habeas corpus or to determine
4 the legal custody or guardianship of a juvenile if the legal custody or guardianship
5 is incidental to the determination of an action pending in that court. ~~But~~ Except as
6 provided in s. 938.028 (3), the jurisdiction of the court assigned to exercise
7 jurisdiction under this chapter and ch. 48 is paramount in all cases involving
8 juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

9 **SECTION 248.** 938.185 (4) (title) of the statutes is amended to read:

10 938.185 (4) (title) ~~AMERICAN INDIAN JUVENILES.~~

11 **SECTION 249.** 938.185 (4) (intro.) of the statutes is amended to read:

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

16 **SECTION 250.** 938.185 (4) (a) of the statutes is amended to read:

17 938.185 (4) (a) At the time of the alleged delinquent act the juvenile was under
18 an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
19 physical placement or visitation with the juvenile's parent, or permanent
20 guardianship.

21 **SECTION 251.** 938.185 (4) (b) of the statutes is amended to read:

22 938.185 (4) (b) At the time of the alleged delinquent act the juvenile was
23 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
24 of the tribal court and any off-reservation trust land of either that Indian tribe or a
25 member of that Indian tribe as a direct consequence of a tribal court order under par.

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1 (a), including a tribal court order placing the juvenile in the home of a relative of the
2 juvenile who on or after the date of the tribal court order resides physically outside
3 the boundaries of a reservation and off-reservation trust land.

4 **SECTION 252.** 938.19 (2) of the statutes is amended to read:

5 938.19 (2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
6 CUSTODIAN. When a juvenile is taken into physical custody under this section, the
7 person taking the juvenile into custody shall immediately attempt to notify the
8 parent, guardian, and legal custodian, and Indian custodian of the juvenile by the
9 most practical means. The person taking the juvenile into custody shall continue
10 such attempt until the parent, guardian, and legal custodian, and Indian custodian
11 of the juvenile are notified, or the juvenile is delivered to an intake worker under s.
12 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker
13 before the parent, guardian, and legal custodian, and Indian custodian are notified,
14 the intake worker, or another person at his or her direction, shall continue the
15 attempt to notify until the parent, guardian, and legal custodian, and Indian
16 custodian of the juvenile are notified.

17 **SECTION 253.** 938.20 (2) (ag) of the statutes is amended to read:

18 938.20 (2) (ag) Except as provided in pars. (b) to (g), a person taking a juvenile
19 into custody shall make every effort to release the juvenile immediately to the
20 juvenile's parent, guardian ~~or~~, legal custodian, or Indian custodian.

21 **SECTION 254.** 938.20 (2) (b) of the statutes is amended to read:

22 938.20 (2) (b) If the juvenile's parent, guardian ~~or~~, legal custodian, or Indian
23 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
24 the person who took the juvenile into custody may release the juvenile to a
25 responsible adult after counseling or warning the juvenile as may be appropriate.

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1 **SECTION 255.** 938.20 (3) of the statutes is amended to read:

2 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
3 CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the
4 person who took the juvenile into custody shall immediately notify the juvenile's
5 parent, guardian, and legal custodian, and Indian custodian of the time and
6 circumstances of the release and the person, if any, to whom the juvenile was
7 released. If the juvenile is not released under sub. (2), the person who took the
8 juvenile into custody shall arrange in a manner determined by the court and law
9 enforcement agencies for the juvenile to be interviewed by the intake worker under
10 s. 938.067 (2). The person who took the juvenile into custody shall make a statement
11 in writing with supporting facts of the reasons why the juvenile was taken into
12 physical custody and shall give a copy of the statement to the intake worker and to
13 any juvenile 10 years of age or older. If the intake interview is not done in person,
14 the report may be read to the intake worker.

15 **SECTION 256.** 938.20 (7) (c) 1. of the statutes is amended to read:

16 938.20 (7) (c) 1. To a parent, guardian, ~~or~~ legal custodian, or Indian custodian,
17 or to a responsible adult if the parent, guardian, ~~or~~ legal custodian, or Indian
18 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
19 counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15
20 years of age or older, without immediate adult supervision, counseling or warning
21 the juvenile as may be appropriate.

22 **SECTION 257.** 938.20 (7) (d) of the statutes is amended to read:

23 938.20 (7) (d) If the juvenile is released from custody, the intake worker shall
24 immediately notify the juvenile's parent, guardian ~~and~~, legal custodian, and Indian

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

3 **SECTION 258.** 938.20 (8) (a) of the statutes is amended to read:

4 938.20 (8) (a) If a juvenile is held in custody, the intake worker shall notify the
5 juvenile's parent, guardian, ~~and legal custodian,~~ and Indian custodian of the reasons
6 for holding the juvenile in custody and of the juvenile's whereabouts unless there is
7 reason to believe that notice would present imminent danger to the juvenile. The
8 parent, guardian, ~~and legal custodian,~~ and Indian custodian shall also be notified of
9 the time and place of the detention hearing required under s. 938.21, the nature and
10 possible consequences of the hearing, ~~and the right to present and cross-examine~~
11 ~~witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian~~
12 ~~juvenile, the right to counsel under s. 938.028 (4) (b).~~ If the parent, guardian, ~~or legal~~
13 ~~custodian,~~ or Indian custodian is not immediately available, the intake worker or
14 another person designated by the court shall provide notice as soon as possible.

15 **SECTION 259.** 938.21 (2) (title) of the statutes is amended to read:

16 938.21 (2) (title) ~~PROCEEDINGS CONCERNING RUNAWAY OR DELINQUENT JUVENILES.~~

17 **SECTION 260.** 938.21 (2) (ag) of the statutes is amended to read:

18 938.21 (2) (ag) Proceedings concerning a juvenile who comes within the
19 jurisdiction of the court under s. 938.12 or 938.13 ~~(7) or (12) or (14)~~ shall be conducted
20 according to this subsection.

21 **SECTION 261.** 938.21 (3) (ag) of the statutes is amended to read:

22 938.21 (3) (ag) Proceedings concerning a juvenile who comes within the
23 jurisdiction of the court under s. 938.13 (4), (6), (6m), ~~or (14) (7)~~ shall be conducted
24 according to this subsection.

25 **SECTION 262.** 938.21 (3) (am) of the statutes is amended to read:

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1 938.21 (3) (am) The parent, guardian, ~~or~~ legal custodian, or Indian custodian
2 may waive his or her right to participate in the hearing under this section. After any
3 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
4 custodian, Indian custodian, or any other interested party for good cause shown.

5 **SECTION 263.** 938.21 (3) (b) of the statutes is amended to read:

6 938.21 (3) (b) If present at the hearing, a copy of the petition or request shall
7 be given to the parent, guardian, ~~or~~ legal custodian, or Indian custodian, and to the
8 juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice
9 of the hearing shall be given to the juvenile's parent, guardian, ~~and~~ legal custodian,
10 and Indian custodian and to the juvenile if he or she is 12 years of age or older under
11 s. 938.20 (8).

12 **SECTION 264.** 938.21 (3) (d) of the statutes is amended to read:

13 938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
14 the parent, guardian, ~~or~~ legal custodian, or Indian custodian of the allegations that
15 have been made or may be made, the nature and possible consequences of this
16 hearing as compared to possible future hearings, the right to present, confront, and
17 cross-examine witnesses, ~~and the right to present witnesses~~ and, in the case of a
18 parent or Indian custodian of an Indian juvenile, the right to counsel under s.
19 938.028 (4) (b).

20 **SECTION 265.** 938.21 (3) (e) of the statutes is amended to read:

21 938.21 (3) (e) If the parent, guardian, ~~or~~ legal custodian, Indian custodian, or
22 ~~the~~ juvenile is not represented by counsel at the hearing and if the juvenile is
23 continued in custody as a result of the hearing, the parent, guardian, legal custodian,
24 Indian custodian, or juvenile may request through counsel subsequently appointed
25 or retained or through a guardian ad litem that the order to hold the juvenile in

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1 custody be reheard. If the request is made, a rehearing shall take place as soon as
2 possible. An order to hold the juvenile in custody shall be reheard for good cause,
3 whether or not counsel was present.

4 **SECTION 266.** 938.21 (5) (d) 1. of the statutes is renumbered 938.21 (5) (d) and
5 amended to read:

6 938.21 (5) (d) If the court finds that any of the circumstances specified in s.
7 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
8 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
9 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~
10 ~~agency responsible for preparing the permanency plan shall file the permanency~~
11 ~~plan with the court not less than 5 days before the date of the hearing.~~

12 **SECTION 267.** 938.21 (5) (d) 2. of the statutes is repealed.

13 **SECTION 268.** 938.21 (5) (d) 3. of the statutes is repealed.

14 **SECTION 269.** 938.23 (2g) of the statutes is created to read:

15 **938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.**
16 Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6),
17 (6m), or (7) involving the removal of the Indian juvenile from his or her home or the
18 placement of the Indian juvenile in an out-of-home care placement, the Indian
19 juvenile's parent or Indian custodian shall have the right to be represented by
20 court-appointed counsel as provided in sub. (4).

21 **SECTION 270.** 938.23 (4) of the statutes is amended to read:

22 **938.23 (4) PROVIDING COUNSEL.** If a juvenile has a right to be represented by
23 counsel or is provided counsel at the discretion of the court under this section and
24 counsel is not knowingly and voluntarily waived, the court shall refer the juvenile
25 to the state public defender and counsel shall be appointed by the state public

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1 defender under s. 977.08 without a determination of indigency. In any situation
2 under sub. (2g) in which a parent 18 years of age or over is entitled to representation
3 by counsel; counsel is not knowingly and voluntarily waived; and it appears that the
4 parent is unable to afford counsel in full, or the parent so indicates; the court shall
5 refer the parent to the authority for indigency determinations specified under s.
6 977.07 (1). In any other situation under this section in which a person has a right
7 to be represented by counsel or is provided counsel at the discretion of the court,
8 competent and independent counsel shall be provided and reimbursed in any
9 manner suitable to the court regardless of the person's ability to pay, except that the
10 court may not order a person who files a petition under s. 813.122 or 813.125 to
11 reimburse counsel for the juvenile who is named as the respondent in that petition.

12 **SECTION 271.** 938.235 (4) (a) 7. of the statutes is amended to read:

13 938.235 (4) (a) 7. Petition for relief from a judgment terminating parental
14 rights under s. 48.028 or 48.46.

15 **SECTION 272.** 938.24 (2r) (title) of the statutes is amended to read:

16 938.24 (2r) (title) ~~AMERICAN~~ INDIAN JUVENILE; NOTIFICATION OF TRIBAL COURT.

17 **SECTION 273.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

18 938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake
19 inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly
20 committed a delinquent act and that all of the following circumstances apply, the
21 intake worker shall promptly notify the clerk of the tribal court under subd. 1., a
22 person who serves as the tribal juvenile intake worker, or a tribal prosecuting
23 attorney that the juvenile has allegedly committed a delinquent act under those
24 circumstances:

25 **SECTION 274.** 938.24 (2r) (a) 1. of the statutes is amended to read:

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1 938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an
2 order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
3 physical placement or visitation with the juvenile's parent, or permanent
4 guardianship.

5 **SECTION 275.** 938.24 (2r) (a) 2. of the statutes is amended to read:

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

13 **SECTION 276.** 938.24 (2r) (b) of the statutes is amended to read:

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

25 **SECTION 277.** 938.243 (1) (e) of the statutes is amended to read:

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1 938.243 (1) (e) The right of ~~the juvenile~~ to counsel under s. 938.23.

2 **SECTION 278.** 938.25 (2g) (title) of the statutes is amended to read:

3 938.25 (2g) (title) ~~AMERICAN INDIAN JUVENILE~~; CONSULTATION WITH TRIBAL COURT.

4 **SECTION 279.** 938.255 (1) (cm) of the statutes is amended to read:

5 938.255 (1) (cm) If the petition is initiating proceedings ~~other than proceedings~~
6 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether
7 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to
8 1963, and, if the juvenile may be subject to that act, the names and addresses of the
9 juvenile's Indian custodian, if any, and Indian tribe, if known.

10 **SECTION 280.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

11 938.255 (1) (cr) 1. a. The juvenile is an ~~American Indian~~ juvenile.

12 **SECTION 281.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

13 938.255 (1) (cr) 1. b. At the time of the alleged delinquent act, the juvenile was
14 under an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to
15 adoption, physical placement or visitation with the juvenile's parent, or permanent
16 guardianship.

17 **SECTION 282.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

18 938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was
19 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
20 of the tribal court and any off-reservation trust land of either that Indian tribe or a
21 member of that Indian tribe as a direct consequence of a tribal court order under
22 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative
23 of the juvenile who on or after the date of the tribal court order resides physically
24 outside the boundaries of a reservation and off-reservation trust land.

25 **SECTION 283.** 938.255 (1) (cr) 2. of the statutes is amended to read:

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

6 **SECTION 284.** 938.255 (1) (g) of the statutes is created to read:

7 938.255 (1) (g) If the juvenile is or may be an Indian juvenile and is alleged to
8 come within the provisions of s. 938.13 (4), (6), (6m), or (7), reliable and credible
9 information showing that continued custody of the juvenile by the juvenile's parent
10 or Indian custodian is likely to result in serious emotional or physical damage to the
11 juvenile under s. 938.028 (4) (d) 1. and reliable and credible information showing that
12 the person who took the juvenile into custody and the intake worker have made
13 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
14 and that those efforts have proved unsuccessful. If the juvenile is or may be an
15 Indian juvenile, is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or
16 (7), and is being held in custody outside of his or her home, the petition shall set forth
17 with specificity both the information required under this paragraph and the
18 information required under par. (f).

19 **SECTION 285.** 938.255 (2) of the statutes is amended to read:

20 938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~, (f), and (g) are not known
21 or cannot be ascertained by the petitioner, the petition shall so state.

22 **SECTION 286.** 938.255 (4) of the statutes is amended to read:

23 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall
24 be given to the juvenile and to the parents, guardian, legal custodian and physical
25 custodian. If the juvenile is an Indian juvenile who is alleged to come within the

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1 provisions of s. 938.13 (4), (6), (6m), or (7), a copy of the petition shall also be given
2 to the Indian juvenile's Indian custodian and tribe.

3 **SECTION 287.** 938.27 (3) (a) 1. of the statutes is amended to read:

4 938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any
5 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
6 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and
7 any person specified in par. (b) or (d), if applicable, of all hearings involving the
8 juvenile under this subchapter, except hearings on motions for which notice must be
9 provided only to the juvenile and his or her counsel. If parents entitled to notice have
10 the same place of residence, notice to one constitutes notice to the other. The first
11 notice to any interested party, foster parent, treatment foster parent, or other
12 physical custodian described in s. 48.62 (2) shall be in writing and may have a copy
13 of the petition attached to it. Notices of subsequent hearings may be given by
14 telephone at least 72 hours before the time of the hearing. The person giving
15 telephone notice shall place in the case file a signed statement of the date and time
16 notice was given and the person to whom he or she spoke.

17 **SECTION 288.** 938.27 (3) (d) of the statutes is created to read:

18 938.27 (3) (d) If the petition that was filed relates to facts concerning a situation
19 under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile, the court shall notify,
20 under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian
21 custodian or tribe may intervene at any point in the proceeding.

22 **SECTION 289.** 938.27 (4) (b) of the statutes is amended to read:

23 938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or
24 her right to legal counsel regardless of ability to pay.

25 **SECTION 290.** 938.273 (1) (a) of the statutes of the statutes is amended to read:

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1 938.273 (1) (a) ~~Service~~ Except as provided in pars. (ag), (ar), and (b), service of
2 summons or notice required by s. 938.27 may be made by mailing a copy of the
3 summons or notice to the ~~persons~~ person summoned or notified. If

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

11 **SECTION 291.** 938.273 (1) (ag) of the statutes is created to read:

12 938.273 (1) (ag) In a proceeding under s. 938.13 (4), (6), (6m), or (7), service of
13 summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian
14 custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

15 **SECTION 292.** 938.273 (1) (b) of the statutes is amended to read:

16 938.273 (1) (b) The court may refuse to grant a continuance when the juvenile
17 is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that
18 service of notice of the next hearing be made personally or by certified mail to the
19 last-known address of the person who failed to appear at the hearing.

20 **SECTION 293.** 938.273 (1) (c) of the statutes is renumbered 938.273 (1) (c)
21 (intro.) and amended to read:

22 938.273 (1) (c) (intro.) Personal service shall be made at least 72 hours before
23 the hearing. Mail shall be sent at least 7 days before the hearing, ~~except that when~~
24 as follows:

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

3 **SECTION 294.** 938.273 (1) (c) 2. of the statutes is created to read:

4 938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves
5 an Indian juvenile and the person to be notified is the Indian juvenile's parent,
6 Indian custodian, or tribe, the mail shall be sent so that it is received by the person
7 to be notified at least 10 days before the time of the hearing or by the U.S. secretary
8 of the interior at least 25 days before the time of the hearing.

9 **SECTION 295.** 938.299 (6) (d) of the statutes is amended to read:

10 938.299 (6) (d) The court may stay the proceedings under this chapter pending
11 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
12 determines that the paternity proceedings will not unduly delay the proceedings
13 under this chapter and the determination of paternity is necessary to the court's
14 disposition of the juvenile if the juvenile is found to be in need of protection or services
15 or if the court determines that the paternity proceedings may result in a finding that
16 the juvenile is an Indian juvenile and in a petition by the juvenile's parent, Indian
17 custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

18 **SECTION 296.** 938.299 (9) (title) of the statutes is amended to read:

19 938.299 (9) (title) ~~AMERICAN INDIAN JUVENILE;~~ TRIBAL COURT INVOLVEMENT.

20 **SECTION 297.** 938.299 (9) (a) of the statutes is amended to read:

21 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the
22 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under
23 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed
24 in a tribe's tribal court with respect to a juvenile to whom the circumstances specified
25 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate

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1 with the tribal court in which the other proceeding is or may be pending to discuss
2 which court is the more appropriate forum.

3 **SECTION 298.** 938.299 (10) of the statutes is created to read:

4 938.299 (10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)
5 the court determines that the juvenile is or may be an Indian juvenile, the court shall
6 provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe
7 in the manner specified in s. 938.028 (4) (a). The next hearing in the proceeding may
8 not be held until at least 10 days after receipt of the notice by the parent, Indian
9 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
10 secretary of the interior. On request of the parent, Indian custodian, or tribe, the
11 court shall grant a continuance of up to 20 additional days to enable the requester
12 to prepare for that hearing.

13 **SECTION 299.** 938.30 (1) of the statutes is amended to read:

14 938.30 (1) TIME OF HEARING. Except as provided in this subsection and s.
15 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition
16 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party
17 wishes to contest an allegation that the juvenile is in need of protection or services
18 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows
19 reasonable time for the parties to prepare but is within 30 days after the filing of a
20 petition or issuance of a citation for a juvenile who is not being held in secure custody
21 or within 10 days after the filing of a petition or issuance of a citation for a juvenile
22 who is being held in secure custody. In a municipal court operated jointly by 2 or more
23 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's
24 plea shall take place within 45 days after the filing of a petition or issuance of a
25 citation for a juvenile who is not being held in secure custody.

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1 **SECTION 300.** 938.30 (2) of the statutes is amended to read:

2 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.

3 At or before the commencement of the hearing under this section the juvenile and
4 the parent, guardian, or legal custodian, or Indian custodian shall be advised of their
5 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the
6 court and that a request for a substitution of judge under s. 938.29 must be made
7 before the end of the plea hearing or is waived. Nonpetitioning parties, including the
8 juvenile, shall be granted a continuance of the plea hearing if they wish to consult
9 with an attorney on the request for a substitution of a judge.

10 **SECTION 301.** 938.30 (6) (a) of the statutes is amended to read:

11 938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),
12 shall set a date for the dispositional hearing which allows reasonable time for the
13 parties to prepare but is no more than 10 days from the plea hearing for a juvenile
14 who is held in secure custody and no more than 30 days from the plea hearing for a
15 juvenile who is not held in secure custody. If all parties consent the court may
16 proceed immediately with the dispositional hearing. If a citation is not contested, the
17 court may proceed immediately to enter a dispositional order.

18 **SECTION 302.** 938.30 (7) of the statutes is amended to read:

19 938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.
20 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set
21 a date for the fact-finding hearing that allows a reasonable time for the parties to
22 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who
23 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for
24 a juvenile who is not held in secure custody.

25 **SECTION 303.** 938.305 of the statutes is amended to read:

SENATE BILL 572**SECTION 303****1 938.305 Hearing upon the involuntary removal of a juvenile.**

2 Notwithstanding other time periods for hearings under this chapter, if a juvenile is
3 removed from the physical custody of the juvenile's parent or guardian under s.
4 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject
5 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30
6 days after a request from the parent or guardian from whom custody was removed.
7 The plea hearing and fact-finding hearing may be combined. This time period may
8 be extended only with the consent of the requesting parent or guardian.

9 **SECTION 304.** 938.31 (7) (a) of the statutes is amended to read:

10 938.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
11 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable
12 time for the parties to prepare but is no more than 10 days after the fact-finding
13 hearing for a juvenile in secure custody and no more than 30 days after the
14 fact-finding hearing for a juvenile not held in secure custody. If all parties consent,
15 the court may immediately proceed with a dispositional hearing.

16 **SECTION 305.** 938.315 (1) (a) 11. of the statutes is created to read:

17 938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request
18 of the parent, Indian custodian, or tribe of a juvenile who is or may be an Indian
19 juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6),
20 (6m), or (7) involving the juvenile.

21 **SECTION 306.** 938.315 (2) of the statutes is amended to read:

22 938.315 (2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by
23 the court only upon a showing of good cause in open court or during a telephone
24 conference under s. 807.13 on the record and only for so long as is necessary, taking
25 into account the request or consent of the representative of the public under s. 938.09

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1 or the parties, the request of a person specified in sub. (1) (a) 11., the interests of the
2 victims, and the interest of the public in the prompt disposition of cases.

3 **SECTION 307.** 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and
4 amended to read:

5 938.32 (1) (d) If the court finds that any of the circumstances specified in s.
6 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
7 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
8 permanency plan for the juvenile. ~~The agency responsible for preparing the~~
9 ~~permanency plan shall file the permanency plan with the court not less than 5 days~~
10 ~~before the date of the hearing.~~

11 **SECTION 308.** 938.32 (1) (d) 2. of the statutes is repealed.

12 **SECTION 309.** 938.32 (1) (d) 3. of the statutes is repealed.

13 **SECTION 310.** 938.33 (4) (d) of the statutes is created to read:

14 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),
15 if the agency knows or has reason to know that the juvenile is an Indian juvenile, a
16 description of any efforts undertaken to determine whether the juvenile is an Indian
17 juvenile; specific information showing that continued custody of the juvenile by the
18 parent or Indian custodian is likely to result in serious emotional or physical damage
19 to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that the
20 county department or agency primarily responsible for providing services to the
21 juvenile has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of
22 the Indian family and that those efforts have proved unsuccessful; a statement as to
23 whether the out-of-home care placement recommended is in compliance with the
24 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)
25 (b); and, if the recommended placement is not in compliance with that order, specific

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1 information showing good cause, as described in s. 938.028 (6) (d), for departing from
2 that order.

3 **SECTION 311.** 938.335 (3j) of the statutes is created to read:

4 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this
5 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13
6 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending
7 placement of the Indian juvenile in a foster home, treatment foster home, group
8 home, or residential care center for children and youth or in the home of a relative
9 other than a parent, the agency shall present as evidence specific information
10 showing all of the following:

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

14 (b) That the county department or agency primarily responsible for providing
15 services to the Indian juvenile has made active efforts under s. 938.028 (4) (d) 2. to
16 prevent the breakup of the Indian family and that those efforts have proved
17 unsuccessful.

18 (c) That the placement recommended is in compliance with the order of
19 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or,
20 if that placement is not in compliance with that order, good cause, as described in s.
21 938.028 (6) (d), for departing from that order.

22 **SECTION 312.** 938.345 (1m) of the statutes is created to read:

23 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.
24 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or
25 services under s. 938.13 (4), (6), (6m), or (7) and who is being placed in an

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1 out-of-home care placement, as defined in s. 938.028 (2) (c), the court shall designate
2 one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the
3 Indian juvenile, in the order of preference listed, unless the court finds good cause,
4 as described in s. 938.028 (6) (d), for departing from that order.

5 **SECTION 313.** 938.355 (2) (b) 6v. of the statutes is created to read:

6 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of
7 protection or services under s. 983.13 (4), (6), (6m), or (7) and who is placed outside
8 the home, a finding supported by clear and convincing evidence, including the
9 testimony of one or more qualified expert witnesses, that continued custody of the
10 Indian juvenile by the parent or Indian custodian is likely to result in serious
11 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding
12 supported by clear and convincing evidence as to whether the county department or
13 agency primarily responsible for providing services under a court order has made
14 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
15 and that those efforts have proved unsuccessful. The findings under this subsection
16 shall be in addition to the findings under subd. 6., except that for the sole purpose
17 of determining whether the cost of providing care for an Indian juvenile is eligible
18 for reimbursement under 42 USC 670 to 679b, the findings under this subdivision
19 and the findings under subd. 6. shall be considered to be the same findings.

20 **SECTION 314.** 938.355 (2) (d) of the statutes is amended to read:

21 938.355 (2) (d) The court shall provide a copy of the dispositional order to the
22 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an
23 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
24 or (7), to the Indian juvenile's Indian custodian and tribe.

SENATE BILL 572**SECTION 315**

1 **SECTION 315.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)
2 and amended to read:

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

9 **SECTION 316.** 938.355 (2d) (c) 2. of the statutes is repealed.

10 **SECTION 317.** 938.355 (2d) (c) 3. of the statutes is repealed.

11 **SECTION 318.** 938.355 (2d) (d) of the statutes is created to read:

12 938.355 **(2d)** (d) This subsection does not affect the requirement under sub. (2)
13 (b) 6v. that the court include in a dispositional order placing an Indian juvenile who
14 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) outside the
15 home a finding as to whether the county department or agency primarily responsible
16 for providing services under a court order has made active efforts under s. 938.028
17 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have
18 proved unsuccessful.

19 **SECTION 319.** 938.355 (6) (an) 1. of the statutes is amended to read:

20 938.355 **(6)** (an) 1. If a juvenile who has violated a municipal ordinance, other
21 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a
22 dispositional order imposed by the municipal court, the municipal court may petition
23 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose
24 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with
25 monitoring by an electronic monitoring system. A sanction may be imposed under

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1 this subdivision only if, at the time of the judgment, the municipal court explained
2 the conditions to the juvenile and informed the juvenile of those possible sanctions
3 for a violation or if before the violation the juvenile has acknowledged in writing that
4 he or she has read, or has had read to him or her, those conditions and possible
5 sanctions and that he or she understands those conditions and possible sanctions.
6 The petition shall contain a statement of whether the juvenile may be subject to the
7 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the juvenile may be
8 subject to that act, the names and addresses of the juvenile's Indian custodian, if any,
9 and tribe, if known.

10 **SECTION 320.** 938.355 (6) (b) of the statutes is amended to read:

11 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction
12 may be brought by the person or agency primarily responsible for the provision of
13 dispositional services, the district attorney or corporation counsel, or the court that
14 entered the dispositional order. If the court initiates the motion, that court is
15 disqualified from holding a hearing on the motion. Notice of the motion shall be given
16 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all
17 parties present at the original dispositional hearing. The motion shall contain a
18 statement of whether the juvenile may be subject to the federal Indian Child Welfare
19 Act, 25 USC 1911 to 1963 and, if the juvenile may be subject to that act, the names
20 and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

21 **SECTION 321.** 938.355 (6) (bm) of the statutes is created to read:

22 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion
23 knows or has reason to know that the juvenile is an Indian juvenile who has been
24 found to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7) or who
25 has been adjudged to have violated a civil law or ordinance, notice under par. (b) to

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1 the Indian juvenile's parent shall be provided in the manner specified in s. 938.028
2 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
3 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
4 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
5 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
6 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
7 grant a continuance of up to 20 additional days to enable the requester to prepare
8 for the hearing.

9 **SECTION 322.** 938.355 (6) (cr) of the statutes is created to read:

10 938.355 (6) (cr) *Indian juvenile; findings.* The court may not order the sanction
11 of placement in a place of nonsecure custody specified in par. (d) 1. for an Indian
12 juvenile who has been found to be in need of protection or services under s. 983.13
13 (4), (6), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance
14 unless the court finds by clear and convincing evidence, including the testimony of
15 one or more qualified expert witnesses, that continued custody of the Indian juvenile
16 by the parent or Indian custodian is likely to result in serious emotional or physical
17 damage to the juvenile under s. 938.028 (4) (d) 1. and that the agency primarily
18 responsible for providing services for the Indian juvenile has made active efforts
19 under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
20 efforts have proved unsuccessful. These findings are not required if they were made
21 in the dispositional order under which the juvenile is being sanctioned. The findings
22 under this paragraph shall be in addition to the findings under par. (cm), except that
23 for the sole purpose of determining whether the cost of providing care for an Indian
24 juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under

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1 this paragraph and the findings under par. (cm) shall be considered to be the same
2 findings.

3 **SECTION 323.** 938.355 (6m) (am) 1. of the statutes is amended to read:

4 938.355 **(6m)** (am) 1. If a juvenile who has violated a municipal ordinance
5 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by
6 the municipal court, the municipal court may petition the court assigned to exercise
7 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction
8 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at
9 the time of the judgment the municipal court explained the conditions to the juvenile
10 and informed the juvenile of that possible sanction or if before the violation the
11 juvenile has acknowledged in writing that he or she has read, or has had read to him
12 or her, those conditions and that possible sanction and that he or she understands
13 those conditions and that possible sanction. The petition shall contain a statement
14 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25
15 USC 1911 to 1963, and, if the juvenile may be subject to that act, the names and
16 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

17 **SECTION 324.** 938.355 (6m) (bm) of the statutes is created to read:

18 938.355 **(6m)** (bm) *Indian juvenile; notice.* If the person initiating the motion
19 knows or has reason to know that the juvenile is an Indian juvenile, notice under par.
20 (b) to the Indian juvenile's parent shall be provided in the manner specified in s.
21 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
22 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
23 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
24 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
25 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall

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1 grant a continuance of up to 20 additional days to enable the requester to prepare
2 for the hearing.

3 **SECTION 325.** 938.355 (6m) (c) of the statutes is amended to read:

4 938.355 **(6m)** (c) *Sanction hearing.* Before imposing a sanction under par. (a)
5 or (ag), the court shall hold a hearing at which the juvenile is entitled to be
6 represented by legal counsel and to present evidence. The Except as provided in par.
7 (bm), the hearing shall be held within 15 days after the filing of a motion under par.
8 (b).

9 **SECTION 326.** 938.355 (6m) (cr) of the statutes is created to read:

10 938.355 **(6m)** (cr) *Indian juvenile; findings.* The court may not order the
11 sanction of placement in a place of nonsecure custody specified in par. (a) 1g. for an
12 Indian juvenile unless the court finds by clear and convincing evidence, including the
13 testimony of one or more qualified expert witnesses, that continued custody of the
14 Indian juvenile by the parent or Indian custodian is likely to result in serious
15 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and that the
16 agency primarily responsible for providing services for the Indian juvenile has made
17 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
18 and that those efforts have proved unsuccessful. These findings are not required if
19 they were made in the dispositional order under which the juvenile is being
20 sanctioned. The findings under this paragraph shall be in addition to the findings
21 under par. (cm), except that for the sole purpose of determining whether the cost of
22 providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670
23 to 679b, the findings under this paragraph and the findings under par. (cm) shall be
24 considered to be the same findings.

25 **SECTION 327.** 938.357 (1) (am) 1. of the statutes is amended to read:

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1 938.357 (1) (am) 1. If the proposed change in placement involves any change
2 in placement other than a change in placement under par. (c), the person or agency
3 primarily responsible for implementing the dispositional order or the district
4 attorney shall cause written notice of the proposed change in placement to be sent
5 to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any
6 foster parent, treatment foster parent, or other physical custodian described in s.
7 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who is in need of
8 protection or services under s. 938.13 (4), (6), (6m), or (7), written notice shall also
9 be sent to the Indian juvenile's Indian custodian and tribe. The notice shall contain
10 the name and address of the new placement, the reasons for the change in placement,
11 a statement describing why the new placement is preferable to the present
12 placement, and a statement of how the new placement satisfies objectives of the
13 treatment plan ordered by the court.

14 **SECTION 328.** 938.357 (1) (am) 1g. of the statutes is created to read:

15 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who is in need of
16 protection or services under s. 938.13 (4), (6), (6m), or (7) and if the proposed change
17 in placement would change the Indian juvenile's placement from a placement outside
18 the home to another placement outside the home, a notice under subd. 1. shall also
19 contain a statement as to whether the new placement is in compliance with the order
20 of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and,
21 if the new placement is not in compliance with that order, specific information
22 showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

23 **SECTION 329.** 938.357 (1) (am) 1m. of the statutes is created to read:

24 938.357 (1) (am) 1m. In a proceeding involving an Indian juvenile who is in
25 need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd.

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1 1. to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
2 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
3 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
4 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
5 secretary of the interior. On request of the Indian juvenile's parent, Indian
6 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
7 to enable the requester to prepare for the hearing.

8 **SECTION 330.** 938.357 (1) (am) 2. of the statutes is amended to read:

9 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
10 a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain
11 a hearing on the matter by filing an objection with the court within 10 days after
12 receipt of the notice. Placements may not be changed until 10 days after that notice
13 is sent to the court unless the parent, guardian, ~~or~~ legal custodian and, or Indian
14 custodian, the juvenile, if 12 or more years of age, and the juvenile's tribe, if the
15 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
16 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in
17 placement that were authorized in the dispositional order may be made immediately
18 if notice is given as required under subd. 1. In addition, a hearing is not required for
19 placement changes authorized in the dispositional order except when an objection
20 filed by a person who received notice alleges that new information is available that
21 affects the advisability of the court's dispositional order.

22 **SECTION 331.** 938.357 (1) (am) 3. of the statutes, as affected by 2007 Wisconsin
23 Act 20, is amended to read:

24 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
25 placement outside the home to another placement outside the home, the change in

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1 placement order shall contain the applicable order under sub. (2v) (a) 1m. and the
2 applicable statement under sub. (2v) (a) 2. If the court changes the placement of an
3 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
4 or (7) from a placement outside the home to another placement outside the home, the
5 change in placement order shall, in addition, comply with the order of placement
6 preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court
7 finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

8 **SECTION 332.** 938.357 (1) (c) 1m. of the statutes is created to read:

9 938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of
10 protection or services under s. 938.13 (4), (6), (6m), or (7), a request under subd. 1.
11 shall also contain specific information showing that continued custody of the Indian
12 juvenile by the parent or Indian custodian is likely to result in serious emotional or
13 physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information
14 showing that the agency primarily responsible for implementing the dispositional
15 order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the
16 Indian family and that those efforts have proved unsuccessful, a statement as to
17 whether the new placement is in compliance with the order of placement preference
18 under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement
19 is not in compliance with that order, specific information showing good cause, as
20 described in s. 938.028 (6) (d), for departing from that order.

21 **SECTION 333.** 938.357 (1) (c) 2. of the statutes is amended to read:

22 938.357 (1) (c) 2. The court shall hold a hearing prior to ordering a change in
23 placement requested under subd. 1. At least 3 days prior to the hearing, the court
24 shall provide notice of the hearing, together with a copy of the request for the change
25 in placement, to the juvenile, the parent, guardian, and legal custodian of the

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1 juvenile, ~~and~~ all parties that are bound by the dispositional order, and, if the juvenile
2 is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
3 (6m), or (7), the Indian juvenile's Indian custodian and tribe. If all parties consent,
4 the court may proceed immediately with the hearing.

5 **SECTION 334.** 938.357 (1) (c) 2m. of the statutes is created to read:

6 938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need
7 of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd. 2. to
8 the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
9 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
10 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
11 custodian, and tribe or until at least 25 days after receipt of the notice by the U.S.
12 secretary of the interior. On request of the Indian juvenile's parent, Indian
13 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
14 to enable the requester to prepare for the hearing.

15 **SECTION 335.** 938.357 (1) (c) 3. of the statutes, as affected by 2007 Wisconsin
16 Act 20, is amended to read:

17 938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement
18 in the juvenile's home to a placement outside the juvenile's home, the change in
19 placement order shall contain the findings under sub. (2v) (a) 1., the applicable order
20 under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in
21 addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to
22 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the
23 court changes the placement of an Indian juvenile who is in need of protection or
24 services under s. 938.13 (4), (6), (6m), or (7) from a placement in the Indian juvenile's
25 home to a placement outside the Indian juvenile's home, the change in placement

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1 order shall contain the findings under sub. (2v) (a) 4. and comply with the order of
2 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b),
3 unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from
4 that order.

5 **SECTION 336.** 938.357 (2m) (a) of the statutes is amended to read:

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

24 **SECTION 337.** 938.357 (2m) (am) of the statutes is created to read:

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1 938.357 **(2m)** (am) *Indian juvenile; information required.* 1. If the proposed
2 change of placement would change the placement of an Indian juvenile placed in the
3 Indian juvenile’s home under s. 938.357 (4), (6), (6m), or (7) to a placement outside
4 the Indian juvenile’s home, a request under par. (a) shall also contain specific
5 information showing that continued custody of the Indian juvenile by the parent or
6 Indian custodian is likely to result in serious emotional or physical damage to the
7 juvenile under s. 938.028 (4) (d) 1., specific information showing that the agency
8 primarily responsible for implementing the dispositional order has made active
9 efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that
10 those efforts have proved unsuccessful, a statement as to whether the new placement
11 is in compliance with the order of placement preference under s. 938.028 (6) (a) or,
12 if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with
13 that order, specific information showing good cause, as described in s. 938.028 (6) (d),
14 for departing from that order.

15 2. If the proposed change in placement would change the placement of an
16 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
17 or (7) from a placement outside the home to another placement outside the home, a
18 request under par. (a) shall also contain a statement as to whether the new
19 placement is in compliance with the order of placement preference under s. 938.028
20 (6) (a) or if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance
21 with that order, specific information showing good cause, as described in s. 938.028
22 (6) (d), for departing from that order.

23 **SECTION 338.** 938.357 (2m) (b) of the statutes is amended to read:

24 938.357 **(2m)** (b) *Hearing; when required.* The court shall hold a hearing prior
25 to ordering any change in placement requested or proposed under par. (a) if the

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1 request states that new information is available that affects the advisability of the
2 current placement. A hearing is not required if the requested or proposed change in
3 placement does not involve a change in placement of a juvenile placed in the
4 juvenile's home to a placement outside the juvenile's home, written waivers of
5 objection to the proposed change in placement are signed by all parties entitled to
6 receive notice under ~~sub. (1) (am) 1.~~ this paragraph, and the court approves. If a
7 hearing is scheduled, not less than 3 days before the hearing the court shall notify
8 the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster
9 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2)
10 of the juvenile, ~~and all parties who are bound by the dispositional order at least 3~~
11 ~~days prior to the hearing, and, if the juvenile is an Indian juvenile who is in need of~~
12 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
13 custodian and tribe. A copy of the request or proposal for the change in placement
14 shall be attached to the notice. If all of the parties consent, the court may proceed
15 immediately with the hearing.

16 **SECTION 339.** 938.357 (2m) (bm) of the statutes is created to read:

17 938.357 (2m) (bm) *Indian juvenile; notice.* If the juvenile is an Indian juvenile
18 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice
19 under par. (b) to the Indian juvenile's parent, Indian custodian, and tribe shall be
20 provided in the manner specified in s. 938.028 (4) (a). No hearing on the request or
21 proposal may be held until at least 10 days after receipt of the notice by the Indian
22 juvenile's parent, Indian custodian, and tribe or until at least 25 days after receipt
23 of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's
24 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
25 additional days to enable the requester to prepare for the hearing.

SENATE BILL 572**SECTION 340**

1 **SECTION 340.** 938.357 (2m) (c) of the statutes, as affected by 2007 Wisconsin
2 Act 20, is renumbered 938.357 (2m) (c) 1. and amended to read:

3 938.357 **(2m)** (c) *Findings required.* 1. If the court changes the juvenile's
4 placement from a placement in the juvenile's home to a placement outside the
5 juvenile's home, the change in placement order shall contain the findings under sub.
6 (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement
7 under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances
8 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination
9 under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who
10 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a
11 placement in the Indian juvenile's home to a placement outside the Indian juvenile's
12 home, the change in placement order shall, in addition, contain the findings under
13 sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028
14 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as
15 described in s. 928.028 (6) (d), for departing from that order.

16 2. If the court changes the juvenile's placement from a placement outside the
17 home to another placement outside the home, the change in placement order shall
18 contain the applicable order under sub. (2v) (a) 1m. and the applicable statement
19 under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who
20 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a
21 placement outside the Indian juvenile's home to another placement outside the
22 Indian juvenile's home, the change in placement order shall, in addition, comply with
23 the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028
24 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for
25 departing from the order.

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1 **SECTION 341.** 938.357 (2v) (a) 4. of the statutes is created to read:

2 938.357 (2v) (a) 4. If the change in placement order changes the placement of
3 an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
4 (6m), or (7) from a placement in the Indian juvenile's home to a placement outside
5 the Indian juvenile's home, a finding supported by clear and convincing evidence,
6 including the testimony of one or more qualified expert witnesses, that continued
7 custody of the Indian juvenile by the parent or Indian custodian is likely to result in
8 serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and
9 a finding supported by clear and convincing evidence that the agency primarily
10 responsible for implementing the dispositional order has made active efforts under
11 s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts
12 have proved unsuccessful. The findings under this subdivision shall be in addition
13 to the findings under subd. 1., except that for the sole purpose of determining
14 whether the cost of providing care for an Indian juvenile is eligible for
15 reimbursement under 42 USC 670 to 679b, the findings under this subdivision and
16 the findings under subd. 1. shall be considered to be the same findings.

17 **SECTION 342.** 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c)
18 and amended to read:

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

25 **SECTION 343.** 938.357 (2v) (c) 2. of the statutes is repealed.

SENATE BILL 572**SECTION 344**

1 **SECTION 344.** 938.357 (2v) (c) 3. of the statutes is repealed.

2 **SECTION 345.** 938.363 (1) (a) of the statutes is amended to read:

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

18 **SECTION 346.** 938.363 (1) (b) of the statutes is amended to read:

19 938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
20 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all
21 parties bound by the dispositional order, the juvenile's foster parent, treatment
22 foster parent, or other physical custodian described in s. 48.62 (2), ~~and~~ the district
23 attorney or corporation counsel in the county in which the dispositional order was
24 entered at least 3 days prior to the hearing and, if the juvenile is an Indian juvenile
25 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian

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

6 **SECTION 347.** 938.365 (1m) of the statutes is amended to read:

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

18 **SECTION 348.** 938.365 (2) of the statutes is amended to read:

19 938.365 (2) NOTICE. No order may be extended without a hearing. The court
20 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the
21 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal
22 custodian, all of the parties present at the original hearing, the juvenile's foster
23 parent, treatment foster parent or other physical custodian described in s. 48.62 (2),
24 and the district attorney or corporation counsel in the county in which the
25 dispositional order was entered ~~of the time and place of the hearing, and, if the~~

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1 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
2 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian.

3 **SECTION 349.** 938.365 (2g) (b) 4. of the statutes is created to read:

4 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside
5 the home under s. 938.13 (4), (6), (6m), or (7), specific information showing that active
6 efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
7 family and that those efforts have proved unsuccessful.

8 **SECTION 350.** 938.365 (2m) (a) 1. of the statutes is amended to read:

9 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
10 extension. If the juvenile is placed outside of his or her home, the person or agency
11 primarily responsible for providing services to the juvenile shall present as evidence
12 specific information showing that the person or agency has made reasonable efforts
13 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
14 to the home is the goal of the permanency plan and any of the circumstances under
15 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home
16 under s. 938.13 (4), (6), (6m), or (7), the person or agency primarily responsible for
17 providing services to the Indian juvenile shall also present as evidence specific
18 information showing that the person or agency has made active efforts under s.
19 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts
20 have proved unsuccessful.

21 1m. The court shall make findings of fact and conclusions of law based on the
22 evidence. The findings of fact shall include a finding as to whether reasonable efforts
23 were made by the agency primarily responsible for providing services to the juvenile
24 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
25 to the home is the goal of the permanency plan and the court finds that any of the

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1 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian
2 juvenile who is placed outside the home under s. 938.13 (4), (6), (6m), or (7), the
3 findings of fact shall also include a finding as to whether active efforts under s.
4 938.028 (4) (d) 2. were made to prevent the breakup of the Indian family and as to
5 whether those efforts have proved unsuccessful. An order shall be issued under s.
6 938.355.

7 **SECTION 351.** 938.365 (2m) (a) 3. of the statutes is amended to read:

8 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.
9 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan
10 and the findings under subd. 2. on a case-by-case basis based on circumstances
11 specific to the juvenile and shall document or reference the specific information on
12 which those findings are based in the order issued under s. 938.355. An order that
13 merely references subd. 1. 1m. or 2. without documenting or referencing that specific
14 information in the order or an amended order that retroactively corrects an earlier
15 order that does not comply with this subdivision is not sufficient to comply with this
16 subdivision.

17 **SECTION 352.** 938.365 (2m) (ad) 1. of the statutes is renumbered 938.365 (2m)
18 (ad) and amended to read:

19 938.365 (2m) (ad) If the court finds that any of the circumstances under s.
20 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
21 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
22 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~
23 ~~agency responsible for preparing the permanency plan shall file the permanency~~
24 ~~plan with the court not less than 5 days before the date of the hearing.~~

25 **SECTION 353.** 938.365 (2m) (ad) 2. of the statutes is repealed.

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1 **SECTION 354.** 938.365 (2m) (ag) of the statutes is amended to read:

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

12 **SECTION 355.** 938.38 (3) (intro.) of the statutes is amended to read:

13 938.38 **(3)** TIME. (intro.) Subject to s. 938.355 (2d) (c) ~~1.~~, the agency shall file
14 the permanency plan with the court within 60 days after the date on which the
15 juvenile was first removed from his or her home, except under either of the following
16 conditions:

17 **SECTION 356.** 938.38 (4) (i) of the statutes is created to read:

18 938.38 **(4)** (i) If the juvenile is an Indian juvenile who is in need of protection
19 or services under s. 938.13 (4), (6), (6m), or (7), all of the following:

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

22 2. A description of the remedial services and rehabilitation programs offered
23 under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

24 3. A statement as to whether the Indian juvenile's placement is in compliance
25 with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s.

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1 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement
2 as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from
3 that order.

4 **SECTION 357.** 938.38 (4m) of the statutes is created to read:

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

12 (b) At least 10 days before the hearing the court shall notify the juvenile, any
13 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
14 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile and,
15 if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or
16 services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian
17 and tribe of the time, place, and purpose of the hearing.

18 (c) If the court knows or has reason to know that the juvenile is an Indian
19 juvenile who is or is alleged to be in need of protection or services under s. 938.13 (4),
20 (6), (6m), or (7), notice under par. (b) to the Indian juvenile's parent, Indian custodian,
21 and tribe shall be provided in the manner specified in s. 938.028 (4) (a). No hearing
22 may be held under par. (a) until at least 10 days after receipt of the notice by the
23 Indian juvenile's parent, Indian custodian, and tribe or until at least 25 days after
24 receipt of the notice by the U.S. secretary of the interior. On request of the Indian

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

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

12 **SECTION 358.** 938.38 (5) (b) of the statutes is amended to read:

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

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

4 **SECTION 359.** 938.38 (5) (bm) of the statutes is created to read:

5 938.38 (5) (bm) If the juvenile is an Indian juvenile who is in need of protection
6 or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the Indian
7 juvenile's parent, Indian custodian, and tribe shall be provided in the manner
8 specified in s. 938.028 (4) (a). No review may be held until at least 10 days after
9 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or
10 until at least 25 days after receipt of the notice by the U.S. secretary of the interior.
11 On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
12 grant a continuance of up to 20 additional days to enable the requester to prepare
13 for the review.

14 **SECTION 360.** 938.38 (5) (c) 8. of the statutes is created to read:

15 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is in need of protection
16 or services under s. 938.13 (4), (6), (6m), or (7), whether active efforts under s. 938.028
17 (4) (d) 2. were made by the agency to prevent the breakup of the Indian family,
18 whether those efforts have proved unsuccessful, whether the Indian child's
19 placement is in compliance with the order of placement preference under s. 938.028
20 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the placement is not in compliance
21 with that order, whether there is good cause, as described in s. 938.028 (6) (d), for
22 departing from that order.

23 **SECTION 361.** 938.38 (5) (d) of the statutes is amended to read:

24 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the
25 permanency plan shall, at least 5 days before a review by a review panel, provide to

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

14 **SECTION 362.** 938.38 (5) (e) of the statutes is amended to read:

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

23 **SECTION 363.** 938.38 (5m) (b) of the statutes is amended to read:

24 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
25 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the

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1 juvenile's foster parent or treatment foster parent, the operator of the facility in
2 which the juvenile is living, or the relative with whom the juvenile is living; the
3 juvenile's counsel, and the juvenile's guardian ad litem; the agency that prepared the
4 permanency plan; and the person representing the interests of the public; and, if the
5 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
6 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time,
7 and place of the hearing.

8 **SECTION 364.** 938.38 (5m) (bm) of the statutes is created to read:

9 938.38 **(5m)** (bm) If the juvenile is an Indian juvenile who is in need of
10 protection or services under s. 938.13 (4), (6), (6m), or (7), notice under par. (b) to the
11 Indian juvenile's parent, Indian custodian, and tribe shall be provided in the manner
12 specified in s. 938.028 (4) (a). No hearing under par. (a) may be held until at least
13 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian,
14 and tribe or until at least 25 days after receipt of the notice by the U.S. secretary of
15 the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe,
16 the court shall grant a continuance of up to 20 additional days to enable the requester
17 to prepare for the hearing.

18 **SECTION 365.** 938.38 (5m) (d) of the statutes is amended to read:

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

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

8 **SECTION 366.** 938.38 (5m) (e) of the statutes is amended to read:

9 938.38 (5m) (e) After the hearing, the court shall make written findings of fact
10 and conclusions of law relating to the determinations under sub. (5) (c) and shall
11 provide a copy of those findings of fact and conclusions of law to the juvenile; the
12 juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent or
13 treatment foster parent, the operator of the facility in which the juvenile is living,
14 or the relative with whom the juvenile is living; the agency that prepared the
15 permanency plan; and the person representing the interests of the public; and, if the
16 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
17 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe. The court shall
18 make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on
19 circumstances specific to the juvenile and shall document or reference the specific
20 information on which those findings are based in the findings of fact and conclusions
21 of law prepared under this paragraph. Findings of fact and conclusions of law that
22 merely reference sub. (5) (c) 7. without documenting or referencing that specific
23 information in the findings of fact and conclusions of law or amended findings of fact
24 and conclusions of law that retroactively correct earlier findings of fact and

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1 conclusions of law that do not comply with this paragraph are not sufficient to comply
2 with this paragraph.

3 **SECTION 367.** 938.538 (6m) (a) 1. of the statutes is repealed.

4 **SECTION 368.** 938.538 (6m) (a) 4. of the statutes is amended to read:

5 938.538 **(6m)** (a) 4. "Minority group member" means a Black, a Hispanic, or an
6 American Indian person.

7 **SECTION 369. Initial applicability.**

8 (1) INVOLUNTARY TERMINATION OF PARENTAL RIGHTS. The treatment of sections
9 48.415 (intro.) and (2) (a) 2., 48.42 (1) (e), and 48.424 (1) (b) and (3) of the statutes
10 first applies to a termination of parental rights petition filed on the effective date of
11 this subsection.

12 **SECTION 370. Effective date.**

13 (1) This act takes effect on July 1, 2008.

14 (END)