


# State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 03/26/2009 (Per: PG)





 Appendix A ... Part 02 of 10

 The 2009 drafting file for LRB-1241/1

has been copied/added to the drafting file for

**2009 LRB-2456**

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

 This cover sheet was added to rear of the original 2009 drafting file. The drafting file was then returned, intact, to its folder and filed.

1           **SECTION 59.** 115.52 (3) (b) 1. of the statutes is amended to read:

2           115.52 (3) (b) 1. Provide evaluation services to assist local educational agencies,  
3 cooperative educational service agencies, county children with disabilities education boards,  
4 private schools, tribal schools, and others.

5           **SECTION 60.** 115.52 (3) (b) 2. of the statutes is amended to read:

6           115.52 (3) (b) 2. Provide technical assistance and consultation services to local  
7 educational agencies, cooperative educational service agencies, county children with  
8 disabilities education boards, private schools, tribal schools, and others.

9           **SECTION 61.** 115.52 (3) (b) 10. of the statutes is amended to read:

10          115.52 (3) (b) 10. Rent or lease technological materials and assistive technology  
11 devices, as defined in s. 115.76 (1), to local educational agencies, cooperative educational  
12 service agencies, county children with disabilities education boards, and private schools, and  
13 tribal schools.

**NOTE:** Includes tribal schools with those groups to which the Wisconsin  
          Educational Services Program for the Deaf and Hard of Hearing may  
          provide the services specified.

14          **SECTION 62.** 115.525 (3) (b) 2. of the statutes is amended to read:

15          115.525 (3) (b) 2. Provide technical assistance and consultation services to entities such  
16 as local educational agencies, cooperative educational service agencies, county children with  
17 disabilities education boards and, private schools, and tribal schools.

**NOTE:** Includes tribal schools with those groups to which the Wisconsin  
          Center for the Blind and Visually Impaired may provide technical  
          assistance and consultation services.

18          **SECTION 63.** 116.01 of the statutes is amended to read:

19          **116.01 Purpose.** The organization of school districts in Wisconsin is such that the  
20 legislature recognizes the need for a service unit between the school district and the state

1 superintendent. The cooperative educational service agencies are designed to serve  
2 educational needs in all areas of Wisconsin by serving as a link both between school districts  
3 and between school districts and the state. Cooperative educational service agencies may  
4 provide leadership, coordination, and education services to school districts, University of  
5 Wisconsin System institutions, and technical colleges. Cooperative educational service  
6 agencies may facilitate communication and cooperation among all public ~~and, private, and~~  
7 tribal schools, agencies, and organizations that provide services to pupils.

**NOTE:** Authorizes CESAs to facilitate communication and cooperation  
among public, private, and tribal schools, agencies, and organizations  
that provide services to pupils.

8 **SECTION 64.** 116.032 (1) and (3) (a) (intro.) of the statutes are amended to read:

9 116.032 (1) Subject to subs. (2) to (5), for the purpose of providing services to pupils,  
10 a board of control may contract with school districts, University of Wisconsin System  
11 institutions, technical college district boards, private schools, tribal schools, and agencies or  
12 organizations that provide services to pupils. A board of control may also contract with one  
13 or more school boards to operate a charter school under s. 118.40 (3) (c).

14 (3) (a) (intro.) A board of control may contract with a private school, tribal school, or  
15 private agency or organization to provide a service or program to that private school, tribal  
16 school, or private agency or organization only if all of the following apply:

**NOTE:** Subject to certain conditions, authorizes a CESA to contract with  
a tribal school.

17 **SECTION 65.** 118.025 of the statutes is amended to read:

18 **118.025 Arbor day observance.** ~~A school~~ The principal of a public, private, or tribal  
19 school may request one free tree provided from state forest nurseries by the department of

1 natural resources under s. 28.06 for each 4th grade pupil in the school for planting in  
2 conjunction with an annual observance and celebration of arbor day.

**NOTE:** Specifies that tribal schools may request trees from the state forest nursery for Arbor Day observance.

3 **SECTION 66.** 118.07 (3) of the statutes is amended to read:

4 118.07 (3) The department shall make available to school districts, private schools,  
5 tribal schools, and charter schools information about meningococcal disease, including the  
6 causes and symptoms of the disease, how it is spread, and how to obtain additional information  
7 about the disease and the availability, effectiveness, and risks of vaccinations against the  
8 disease. The department may do so by posting the information on its Internet site. At the  
9 beginning of the 2006-07 to 2011-12 school years, each school board and the governing body  
10 of each private school and each charter school shall provide the parents and guardians of pupils  
11 enrolled in grades 6 to 12 in the school district or school with the information. At the beginning  
12 of the 2012-13 school year and each school year thereafter, each school board and the  
13 governing body of each private school and each charter school shall provide the parents and  
14 guardians of pupils enrolled in grade 6 in the school district or school with the information.

**NOTE:** Requires DPI to provide information to tribal schools about meningococcal disease. However, in contrast to requirements imposed on public, private, and charter schools, the draft does not require that tribal schools provide the information to parents and guardians of pupils.

15 **SECTION 67.** 118.08 (1) of the statutes is amended to read:

16 118.08 (1) On any street or highway which borders the grounds of any public ~~or~~ private,  
17 or tribal school in which school is held for a term of not less than 6 months, the authority in  
18 charge of the maintenance of the street or highway shall erect black and yellow "school"  
19 warning signs. The authority may also designate school crossings across any street or  
20 highway, whether or not the street or highway borders on the grounds of a school.

**NOTE:** Requires the authority in charge of a street or highway to erect school warning signs, including signs for tribal schools.

1       **SECTION 68.** 118.125 (2) (n) of the statutes is amended to read:

2       118.125 (2) (n) For the purpose of providing services to a pupil before adjudication, a  
3 school board may disclose pupil records to a law enforcement agency, district attorney, city  
4 attorney, corporation counsel, agency, as defined in s. 938.78 (1), intake worker under s.  
5 48.067 or 938.067, court of record, municipal court, private school, or another school board  
6 if disclosure is pursuant to an interagency agreement and the person to whom the records are  
7 disclosed certifies in writing that the records will not be disclosed to any other person except  
8 as permitted under this subsection. For the purpose of providing services to a pupil before  
9 adjudication, a school board may disclose pupil records to a tribal school if disclosure is  
10 pursuant to an agreement between the school board and the governing body of the tribal school  
11 and if the school board determines that enforceable protections are provided by a tribal school  
12 policy or tribal law that requires the tribal school official to whom the records are disclosed  
13 not to disclose the records to any other person except as permitted under this subsection.

**NOTE:** Current law provides that, for the purpose of providing services to a pupil before adjudication, a school board may disclose pupil records to certain entities, including a private school, if disclosure is pursuant to an interagency agreement and the person to whom records are disclosed certifies that the records will not be disclosed to any other person except as permitted under s. 118.125 (2), stats. The draft permits a school board to disclose pupil records to a tribal school under this provision if disclosure is pursuant to an agreement between the school board and the governing body of the tribal school and if the school board determines that enforceable protections are provided by a tribal school policy or tribal law that requires the tribal school official to whom the records are disclosed not to disclose the records to any other person except as permitted under s. 118.125 (2), stats.

14       **SECTION 69.** 118.125 (4) of the statutes is amended to read:

1           118.125 (4) TRANSFER OF RECORDS. Within 5 working days, a school district shall  
2 transfer to another school, including a private or tribal school, or school district all pupil  
3 records relating to a specific pupil if the transferring school district has received written notice  
4 from the pupil if he or she is an adult or his or her parent or guardian if the pupil is a minor  
5 that the pupil intends to enroll in the other school or school district or written notice from the  
6 other school or school district that the pupil has enrolled or from a court that the pupil has been  
7 placed in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential  
8 care center for children and youth, as defined in s. 938.02 (15g). In this subsection, "school"  
9 and "school district" include any juvenile correctional facility, secured residential care center  
10 for children and youth, adult correctional institution, mental health institute, or center for the  
11 developmentally disabled, that provides an educational program for its residents instead of or  
12 in addition to that which is provided by public ~~and, private, and tribal~~ schools.

NOTE: Clarifies that, under current law, the requirement that a school district transfer records to a school includes a requirement that a school district transfer records to a tribal school. The draft also adds a reference to tribal schools in referring to a center for the developmentally disabled that provides an educational program directly or in addition to that provided by a tribal school.

13           SECTION 70. 118.127 (2) of the statutes is amended to read:

14           118.127 (2) A school district ~~or, private school, or tribal school~~ may disclose  
15 information from law enforcement officers' records obtained under s. 938.396 (1) (c) 3. only  
16 to persons employed by the school district who are required by the department under s. 115.28  
17 (7) to hold a license, to persons employed by the private school or tribal school as teachers,  
18 and to other school district ~~or, private school, or tribal school~~ officials who have been  
19 determined by the school board or governing body of the private school or tribal school to have  
20 legitimate educational interests, including safety interests, in that information. In addition,

1 if that information relates to a pupil of the school district ~~or~~, private school, or tribal school,  
2 the school district ~~or~~, private school, or tribal school may also disclose that information to  
3 those employees of the school district ~~or~~, private school, or tribal school who have been  
4 designated by the school board or governing body of the private school or tribal school to  
5 receive that information for the purpose of providing treatment programs for pupils enrolled  
6 in the school district ~~or~~, private school, or tribal school. A school district may not use law  
7 enforcement officers' records obtained under s. 938.396 (1) (c) 3. as the sole basis for  
8 expelling or suspending a pupil or as the sole basis for taking any other disciplinary action,  
9 including action under the school district's athletic code, against a pupil.

NOTE: This amendment relates to the amendment to s. 938.396 (1) (c) 3., below. If law enforcement records are disclosed to a tribal school under that provision, the amendment to s. 118.127 (2), stats., imposes duties on the tribal school that are the same as those duties imposed on a private school that receives such information, namely, limiting to whom the tribal school may disclose the information. (The amendment to s. 938.396 (1) (c) 3., stats., below, specifies that the law enforcement agency policy must specify that the law enforcement agency cannot provide information under s. 938.396 (1) (c) 3., stats., to a tribal school unless the governing body of the tribal school agrees that the information will be used by the tribal school in the same manner as public and private schools as provided under s. 118.127 (2), stats.)

10 SECTION 71. 118.145 (3) and (4) of the statutes are amended to read:

11 118.145 (3) If the superintendent or principal of a private school or of a tribal school  
12 files with the department the course of study for elementary grades prescribed by such school  
13 and if such course of study is substantially equivalent to the course of study prepared for  
14 elementary grades by the department, a certificate or diploma or other written evidence issued  
15 by the superintendent or principal of the private school or tribal school showing that the pupil  
16 has completed such course of study shall entitle the pupil to admission to a public high school.

1 The certificate or diploma or a certified copy thereof or a certified copy of a list of graduates  
2 shall be filed with the school district clerk of the school district operating the high school.

3 (4) The school board of a school district operating high school grades shall allow a pupil  
4 enrolled in a private school, a pupil enrolled in a tribal school, or a pupil enrolled in a  
5 home-based educational program, who has met the standards for admission to high school  
6 under sub. (1), to take up to 2 courses during each school semester if the pupil resides in the  
7 school district in which the public school is located and if the school board determines that  
8 there is sufficient space in the classroom.

NOTE: Permits a tribal school to file with DPI information about the elementary school course of study which entitles a pupil having completed that course of study to be admitted to a public high school. Also permits a tribal school pupil who has met the standards for admission to high school to take up to 2 courses each semester at a public high school in the school district in which the pupil resides if the school board determines that there is sufficient space in the classroom. (Under s. 121.004 (7) (e), stats., public schools receive some equalization aid for providing this instruction; under s. 121.05 (1) (a) 12., stats., the number of these pupils is included in the annual school district report; and under s. 121.54 (2) (c), stats., a school district may elect, but is not required, to provide transportation for pupils under s. 118.145 (4), stats.)

9 SECTION 72. 118.15 (1) (a) of the statutes is amended to read:

10 118.15 (1) (a) Except as provided under pars. (b) to (d) and (g) and sub. (4), unless the  
11 child is excused under sub. (3) or has graduated from high school, any person having under  
12 control a child who is between the ages of 6 and 18 years shall cause the child to attend school  
13 regularly during the full period and hours, religious holidays excepted, that the public or,  
14 private, or tribal school in which the child should be enrolled is in session until the end of the  
15 school term, quarter or semester of the school year in which the child becomes 18 years of age.



**NOTE:** Current law does not clearly provide that attendance at a tribal school satisfies the compulsory school attendance laws. The draft explicitly refers to attendance at a tribal school.

The draft does not treat tribal schools similarly to private schools under the compulsory school attendance laws in that private schools are required to: (1) keep records, including: the dates school is held, the names and ages of pupils, the names and addresses of parents of the pupils, and the dates pupils were present at school; and (2) make that information available to the school board's school attendance officer. The draft does not require tribal schools to do so.

1           **SECTION 73.** 118.15 (1) (d) 4. of the statutes is amended to read:

2           118.15 (1) (d) 4. Enrollment in any nonsectarian private school or program, or tribal  
3 school, located in the school district in which the child resides, which complies with the  
4 requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant  
5 to a contractual agreement which under s. 121.78 (5) that provides for the payment of the  
6 child's tuition by the school district.

**NOTE:** Under current law, a child's parent or the child may request that the school board provide program or curriculum modifications, including several items specified in the statutes, including a request to attend a private school, rather than the public school. The school board then decides the matter. The draft permits a curriculum modification to be requested to attend a tribal school.

7           **SECTION 74.** 118.153 (1) (b) of the statutes is amended to read:

8           118.153 (1) (b) "Dropout" means a child who ceased to attend school, does not attend  
9 a public ~~or~~ private, or tribal school, technical college, or home-based private educational  
10 program on a full-time basis, has not graduated from high school, and does not have an  
11 acceptable excuse under s. 118.15 (1) (b) to (d) or (3).

**NOTE:** Exempts a child who attends tribal school from the definition of "dropout" in the statute for children at risk of not graduating from high school programs. That definition is used by cross-reference in several other statutes.

The draft does not amend s. 118.163, stats., relating to municipal truancy and school dropout ordinances. However, the effect of the amendments noted above that include tribal schools will affect s. 118.163, stats.

1           **SECTION 75.** 118.16 (2) (em) of the statutes is created to read:

2           118.16 (2) (em) Shall request information regarding the attendance of any child  
3           between the ages of 6 and 18 who is a resident of the school district and who claims or is  
4           claimed to be in attendance at a tribal school.

**NOTE:** As part of the school attendance enforcement statute, current law requires private schools to keep a record containing certain information about pupils, including their attendance. Current law also specifies that a school attendance officer must have access to this information at all reasonable times. [s. 118.16 (2) (e) and (3), stats.] The draft requires a school attendance officer to request information about the attendance of a child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school. The draft does not require the tribal school to keep or provide the information to the school attendance officer.

5           **SECTION 76.** 118.162 (1) (am) and (m) of the statutes are created to read:

6           118.162 (1) (am) A representative from each tribal school in the county, designated by  
7           the governing body of that tribal school that he or she represents, who may be a member of  
8           the tribal school governing body, school administrator, teacher, pupil services professional,  
9           or parent of a child enrolled in that tribal school.

10          (m) A parent of a pupil enrolled in a tribal school located in the county, who resides in  
11          the county, designated by the county board.

**NOTE:** Adds to the county committee that advises on school districts' truancy plans: (1) a representative of each tribal school in the county; and (2) a parent of a tribal school pupil. The latter provision is modeled after the provision for a parent of a private school pupil being appointed to the county committee.

12          **SECTION 77.** 118.255 (2) of the statutes is amended to read:

1           118.255 (2) (a) If a school board, cooperative educational service agency, or county  
2 children with disabilities education board provides physical or mental health treatment  
3 services to its pupils, it may also provide such services within the private school or tribal  
4 school facilities to those private school or tribal school pupils who are referred to the public  
5 school board, cooperative educational service agency, or county children with disabilities  
6 education board by the administrator of a private school or tribal school for evaluation for  
7 possible servicing. There shall be no charge for health treatment services provided to any  
8 pupils unless public school students or their parents are charged for similar services. For  
9 purposes of state aid, as it is provided under s. 115.88 to the public school district, for the health  
10 treatment service program, private school and tribal school pupils receiving such health  
11 treatment services shall be counted among the pupils of the public school district receiving  
12 such services, although each child may receive health treatment services within the child's  
13 own school facilities, whether public ~~or~~, private, or tribal.

14           (b) A school board, cooperative educational service agency, or county children with  
15 disabilities education board providing services under this section may enter into agreements  
16 with the administrator of a private school or tribal school on the scheduling, space, and other  
17 necessary arrangements for performance of such health treatment services. A school board,  
18 cooperative educational service agency, or county children with disabilities education board  
19 shall not pay any private school or tribal school for any services or facilities provided under  
20 this section. Control of the health treatment services program shall rest with the public school  
21 board, cooperative educational service agency, or county children with disabilities education  
22 board.

23           (c) A school board, cooperative educational service agency, or county children with  
24 disabilities education board may provide health treatment services only within private school

1 or tribal school facilities located within the boundaries of the school district, cooperative  
2 educational service agency, or county.

**NOTE:** Permits school boards, CESAs, and county children with disabilities education boards to provide health treatment services to tribal school pupils at tribal schools under certain circumstances. One of the required circumstances is that the pupil be referred by the tribal school administrator.

3 **SECTION 78.** 118.257 (1) (d) of the statutes is amended to read:

4 118.257 (1) (d) "School" means a public, parochial ~~or~~, private, or tribal school which  
5 provides an educational program for one or more grades between grades 1 and 12 and which  
6 is commonly known as an elementary school, middle school, junior high school, senior high  
7 school, or high school.

**NOTE:** Current law exempts from liability certain staff at a private school for removing a pupil from school premises or from school-sponsored activities for suspicion of certain activities relating to controlled substances. Changing this definition has the effect of extending to certain tribal school officials the same exemption from liability under state law. It also has the effect of adding tribal schools to the definition of school in s. 134.66 (1) (h), stats., which cross-references this definition. This would prohibit a retailer from placing a vending machine that dispenses cigarettes within 500 feet of a tribal school.

Extending the immunity protections under state law to certain tribal school staff does not affect liability under tribal law or whatever right such staff may have to raise a defense of tribal sovereign immunity if sued.

8 **SECTION 79.** 118.29 (2) (a) (intro.) and 3. and (b) and (3) of the statutes are amended  
9 to read:

10 118.29 (2) (a) (intro.) Notwithstanding chs. 441, 447, 448, and 450, a school bus  
11 operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he  
12 or she is operating, any school employee or volunteer, county children with disabilities  
13 education board employee or volunteer or cooperative educational service agency employee

1 or volunteer authorized in writing by the administrator of the school district, the board or the  
2 agency, respectively, or by a school principal, ~~and~~ any private school employee or volunteer  
3 authorized in writing by a private school administrator or private school principal, and any  
4 tribal school employee or volunteer authorized in writing by a tribal school administrator or  
5 tribal school principal:

6 3. ~~Is Subject to sub. (4m).~~ is immune from civil liability for his or her acts or omissions  
7 in administering a drug or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the  
8 act or omission constitutes a high degree of negligence. This subdivision does not apply to  
9 health care professionals.

10 (b) ~~Any Subject to sub. (4m).~~ any school district administrator, county children with  
11 disabilities education board administrator, cooperative educational service agency  
12 administrator, public ~~or~~ private, or tribal school principal, or private or tribal school  
13 administrator who authorizes an employee or volunteer to administer a drug or prescription  
14 drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless  
15 it constitutes a high degree of negligence.

16 (3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION. Any school bus operator validly  
17 authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating  
18 and any public ~~or~~ private, or tribal school employee or volunteer, county children with  
19 disabilities education board employee or volunteer, or cooperative educational service agency  
20 employee or volunteer, other than a health care professional, who in good faith renders  
21 emergency care to a pupil of a public ~~or~~ private, or tribal school is immune from civil liability  
22 for his or her acts or omissions in rendering such emergency care. The immunity from civil  
23 liability provided under this subsection is in addition to and not in lieu of that provided under  
24 s. 895.48 (1).

1           **SECTION 80.** 118.29 (4m) of the statutes is created to read:

2           **118.29 (4m) APPLICABILITY TO TRIBAL SCHOOL EMPLOYEES.** The immunity under sub.  
3           (2) applies to a tribal school employee, administrator, or volunteer only if the governing body  
4           of the tribal school has adopted a written policy that complies with sub. (4).

**NOTE:** Current law, in pertinent part, permits private school employees and volunteers to administer certain drugs to pupils under certain circumstances and exempts them from liability under state law for doing so. It also requires the governing board of a private school to adopt a written policy governing such administration. The draft permits tribal school employees and volunteers to do so in the same situations and extends to them the same exemptions from liability under state law if the governing body of the tribal school has adopted a written policy that complies with the requirements for a written policy that apply to private schools. The draft also extends to tribal school employees and volunteers the same exemption from liability under state law when they are rendering emergency care that applies to certain others, including private school employees and volunteers.

Extending the immunity protections under state law to tribal school employees and volunteers does not affect liability under tribal law or whatever right tribal school employees and volunteers may have to raise a defense of tribal sovereign immunity if sued.

5           **SECTION 81.** 118.291 (1g) (b) of the statutes is amended to read:

6           118.291 (1g) (b). "School" includes a public ~~and a~~ private, or tribal school.

7           **SECTION 82.** 118.291 (2) (c) of the statutes is created to read:

8           118.291 (2) (c) No tribal school or tribal school employee is civilly liable for injury to  
9           a pupil caused by a tribal school employee who prohibits a pupil from using an inhaler because  
10           of the employee's good faith belief that the requirements of sub. (1r) had not been satisfied  
11           or who allows a pupil to use an inhaler because of the employee's good faith belief that the  
12           requirements of sub. (1r) had been satisfied.

**NOTE:** Current law permits a pupil with asthma to use an inhaler at school under circumstances when the pupil has provided the school principal with written approval of the pupil's physician and parent.

Current statutes provide immunity under state law for school employees who permit inhaler use because of a good faith belief that these conditions have been satisfied or who prohibit use because of a good faith belief that these conditions have not been satisfied.

The draft extends the immunity to tribal school employees under the same conditions. This extension of immunity protections under state law does not affect liability under tribal law or whatever right a tribal school employee may have to raise a defense of tribal sovereign immunity if sued.

1           **SECTION 83.** 118.295 of the statutes is amended to read:

2           **118.295 Suicide intervention; civil liability exemption.** Any school board, private  
3 school, tribal school, county children with disabilities education board, or cooperative  
4 educational service agency, and any officer, employee, or volunteer thereof, who in good faith  
5 attempts to prevent suicide by a pupil is immune from civil liability for his or her acts or  
6 omissions in respect to the suicide or attempted suicide. The civil liability immunity provided  
7 in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

**NOTE:** Current law, in pertinent part, specifies that private school officers, employees, and volunteers who in good faith attempt to prevent suicide by a pupil are exempt under state law from civil liability for their acts or omissions. The draft extends the same exemptions from liability under state law to tribal school officers, employees, and volunteers.

Extending the immunity protections to tribal school officers, employees, and volunteers does not affect liability under tribal law or whatever right tribal school officers, employees, and volunteers may have to raise a defense of tribal sovereign immunity if sued.

8           **SECTION 84.** 120.18 (1) (a) 2. and (s) of the statutes are amended to read:

9           **120.18 (1) (a) 2.** Adding the number of persons under this paragraph who were residents  
10 of the school district and were enrolled in the school district on the 3rd Friday of September  
11 of the previous school year; plus the number of persons under this paragraph who were  
12 residents of the school district and who were enrolled in private schools, tribal schools,  
13 home-based private educational programs, or other school districts on the 3rd Friday of

1 September of the previous school year; plus the number or an estimate of the number of those  
2 persons under this paragraph who were residents of the school district and not enrolled in the  
3 school district, private schools, tribal schools, home-based private educational programs, or  
4 other school districts on the 3rd Friday of September of the previous school year.

5 (s) Such other facts and statistics in relation to the schools, public or, private, or tribal,  
6 in the school district as the department requires.

**NOTE:** In the annual school district report submitted by the school district clerk to DPI, the draft requires inclusion of the above information about tribal schools and tribal school pupils. (This information can be included only if the tribal school voluntarily provides the information to the school district.)

7 **SECTION 85.** 121.05 (1) (a) 7. of the statutes is amended to read:

8 121.05 (1) (a) 7. Pupils enrolled in a nonsectarian private school or program or tribal  
9 school under s. 118.15 (1) (d) 4.

**NOTE:** Current law requires that the pupil membership report (which is used to calculate state aid to school districts) include pupils enrolled in a nonsectarian private school or program if the school district is paying tuition for the pupil to attend such a private school or program because of a curriculum modification agreed to by the school board. The draft adds tribal schools to reflect the proposed amendment to s. 118.15 (1) (d) 4., stats., above.

10 **SECTION 86.** 121.76 (1) (a) of the statutes is amended to read:

11 121.76 (1) (a) "Agency of service" means a school board, board of control of a  
12 cooperative educational service agency, county children with disabilities education board, or  
13 governing body of a nonsectarian private school or, university model school, or tribal school,  
14 which provides services for which tuition may be charged.

**NOTE:** Current law defines "agency of service" for purposes of subch. V, ch. 121, stats., which describes various circumstances under which a pupil may attend a school other than a public school in the school district of residence, how tuition and aid are calculated if the school district is paying for it, and how tuition is otherwise calculated. The entity



providing the services is the agency of service. The draft adds tribal schools to this definition. As a result of other provisions of this draft, a tribal school may be providing the services due to curriculum modification or court-ordered educational placement.

1           **SECTION 87.** 121.76 (2) (c) of the statutes is amended to read:

2           121.76 (2) (c) The agency of service, other than a tribal school, shall rebate a  
3 proportional share of state or federal aid received for pupils for whom it received tuition. The  
4 rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt  
5 by the agency of service.

**NOTE:** Under current law, if an agency of service, including a private school, receives tuition from a school district, it must rebate a proportional share of any federal or state aid it received. Because a tribal school could assert a defense of sovereign immunity in any lawsuit to collect a rebate, the draft does not require a tribal school to rebate such aid. Rather, the draft provides in s. 121.78 (4) and (5), stats., below, that federal and state aid are subtracted in determining the amount of tuition paid to a tribal school that is providing either court-ordered educational placement under an agreement with the school district or curriculum modification under an agreement with the school district.

6           **SECTION 88.** 121.78 (4) of the statutes is amended to read:

7           121.78 (4) **COURT-ORDERED EDUCATIONAL SERVICES.** If a pupil is receiving educational  
8 services as the result of a court order under s. 48.345 (12) or 938.34 (7d), the school board  
9 of the school district in which the pupil resided at the time of issuance of the court order shall  
10 pay tuition for the pupil. A school board paying tuition for a pupil under this subsection shall  
11 count the pupil as 1.0 pupil in membership for general aid under subch. II. The school board  
12 shall pay each agency specified under s. 48.345 (12) (a) 2. to 4. or 938.34 (7d) (a) 2. to 4., for  
13 each full-time equivalent pupil served by the agency, an amount equal to at least 80% of the  
14 average per pupil cost for the school district. No state aid may be paid to the technical college  
15 district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34 (7d) (a)  
16 4. The minimum amount paid by a school board to a tribal school specified under s. 48.345

- 1 (12) (a) 5. or 938.34 (7d) (a) 5., for each full-time equivalent pupil served by the tribal school.  
2 shall be determined by multiplying the average per pupil cost for the school district by 0.8 and  
3 then subtracting any federal or state aid received by the tribal school for the pupil.

NOTE: Amends this provision to reflect the amendments which add s. 48.345 (12) (a) 5., stats., above, and s. 938.34 (7d) (a) 5., stats., below, which permit a court to require in a CHIPS, JIPS, or delinquency dispositional order an educational placement at a tribal school that must be paid for by the school district. Under current law, a school board must pay an agency providing such services, other than a technical college, at least 80% of the average per pupil cost for the school district. This is the minimum amount that must be specified in the contract between the school board and agency. The agency of service must rebate all federal and state aid received for that pupil under s. 121.76 (2) (c), stats.

The draft specifies that if a tribal school is providing a court-ordered educational placement for a pupil under an agreement with the school district, the *minimum* amount paid by the school board to the tribal school must be determined by multiplying the average per pupil cost of the school district times 0.80 and then subtracting all federal and state aid received by the tribal school for that pupil.

- 4 **SECTION 89.** 121.78 (5) of the statutes is created to read:

- 5 121.78 (5) ALTERNATIVE PROGRAMS. If a pupil is placed in an alternative program under  
6 s. 118.15 (1) (d) 4., the school board shall pay tuition to the agency of service pursuant to a  
7 contractual agreement between the school board and the agency of service. If the agency of  
8 service is a tribal school, any federal or state aid received by the tribal school for the pupil shall  
9 be subtracted in determining the amount of aid to be paid.

NOTE: The draft provides that, if a school board approves a curriculum modification allowing a pupil to attend a nonsectarian private school or tribal school at school district expense and pursuant to an agreement between the school board and the private school or tribal school, the school board pays tuition pursuant to an agreement with the private school or tribal school. (Current law included this requirement with respect to private schools in s. 118.15 (1) (d) 4., stats.; the draft adds tribal schools and cross-references the requirement with respect to private schools.) The draft requires such an agreement with a tribal

school to provide for subtracting the amount of federal and state aid received for the pupil in determining the amount of tuition paid by the school district to the tribal school. The draft is silent with respect to private schools in this regard, as private schools are required to rebate any such payment under s. 121.76 (2) (c), stats.

1           **SECTION 90.** 125.09 (2) (a) 2. of the statutes is amended to read:

2           125.09 (2) (a) 2. "School" means a public, ~~school, a~~ parochial or private school, or a  
3 tribal school, as defined in s. 115.001 (15m), which provides an educational program for one  
4 or more grades between grades 1 and 12 and which is commonly known as an elementary  
5 school, middle school, junior high school, senior high school, or high school.

**NOTE:** Includes tribal school in the definition of "school" for purposes of the statute that restricts possession of alcohol beverages on school premises. Violation of this statute or an ordinance adopted in conformity with this statute has consequences under various statutes, with special provisions applying to juveniles.

6           **SECTION 91.** 125.68 (3) (intro.) of the statutes is amended to read:

7           125.68 (3) **RESTRICTIONS ON LOCATION.** (intro.) No "Class A" or "Class B" license or  
8 permit may be issued for premises the main entrance of which is less than 300 feet from the  
9 main entrance of any public or parochial school, any tribal school, as defined in s 115.001  
10 (15m), any hospital, or any church, except that this prohibition may be waived by a majority  
11 vote of the governing body of the municipality in which the premises is located. The distance  
12 shall be measured by the shortest route along the highway from the main entrance of the  
13 school, church, or hospital to the main entrance of the premises covered by the license or  
14 permit. The prohibition in this subsection does not apply to any of the following:

**NOTE:** Includes tribal schools in the statute that generally restricts the location of the premises for which a class A or class B liquor license is issued from being within 300 feet from the main entrance of a school.

15           **SECTION 92.** 252.15 (1) (ab) and (2) (a) 7. a. of the statutes are amended to read:

1           252.15 (1) (ab) "Affected person" means an emergency medical technician; first  
2 responder; fire fighter; peace officer; correctional officer; person who is employed at a  
3 juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center  
4 for children and youth, as defined in s. 938.02 (15g); state patrol officer; jailer, keeper of a jail,  
5 or person designated with custodial authority by the jailer or keeper; health care provider;  
6 employee of a health care provider; staff member of a state crime laboratory; social worker;  
7 or employee of a school district, cooperative educational service agency, charter school,  
8 private school, tribal school, as defined in s. 115.001 (15m), the Wisconsin Educational  
9 Services Program for the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and  
10 Visually Impaired.

11           (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical  
12 technician; first responder; fire fighter; peace officer; correctional officer; person who is  
13 employed at a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured  
14 residential care center for children and youth, as defined in s. 938.02 (15g); state patrol officer;  
15 jailer, keeper of a jail, or person designated with custodial authority by the jailer or keeper,  
16 during the course of providing care or services to an individual; a peace officer, correctional  
17 officer, state patrol officer, jailer, or keeper of a jail, or person designated with custodial  
18 authority by the jailer or keeper, while searching or arresting an individual or while controlling  
19 or transferring an individual in custody; a health care provider or an employee of a health care  
20 provider, during the course of providing care or treatment to an individual or handling or  
21 processing specimens of body fluids or tissues of an individual; a staff member of a state crime  
22 laboratory, during the course of handling or processing specimens of body fluids or tissues of  
23 an individual; social worker; or an employee of a school district, cooperative educational  
24 service agency, charter school, private school, tribal school, as defined in s. 115.001 (15m).

1 the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the  
2 Wisconsin Center for the Blind and Visually Impaired, while performing employment duties  
3 involving an individual; who is significantly exposed to the individual may subject the  
4 individual's blood to a test or a series of tests for the presence of HIV, antigen or nonantigenic  
5 products of HIV or an antibody to HIV and may receive disclosure of the results.

**NOTE:** While the results of HIV tests are generally confidential, this amendment includes tribal school employees in the category of persons who, when significantly exposed to an individual (for example, by contact with the individual's blood) may require HIV testing of the individual and receive the results of the test.

6 **SECTION 93.** 255.30 (4) of the statutes is amended to read:

7 255.30 (4) The state superintendent of public instruction shall prepare and circulate to  
8 each public and private educational institution and to each tribal school, as defined in s.  
9 115.001 (15m). in this state instructions and recommendations for implementing the eye  
10 safety provisions of this section.

**NOTE:** Requires the state superintendent to provide information about eye safety to tribal schools, in addition to the other entities specified in current law.

11 **SECTION 94.** 301.45 (1d) (c) of the statutes is amended to read:

12 301.45 (1d) (c) "Student" means a person who is enrolled on a full-time or part-time  
13 basis in any public ~~or~~ private, or tribal educational institution, including a secondary school,  
14 a business, trade, technical or vocational school, or an institution of higher education.

**NOTE:** Amends the definition of "student" for the purpose of the sex offender registration law to also include students at a tribal educational institution, which would include tribal colleges as well as tribal schools. The registration and reporting requirements apply to state residents, persons employed or carrying on a vocation in this state, and students attending school in this state.

15 **SECTION 95.** 301.46 (4) (a) 1. of the statutes is amended to read:

1           301.46 (4) (a) 1. A public or private elementary or secondary school or a tribal school,  
2 as defined in s. 115.001 (15m).

**NOTE:** Adds tribal schools to the list of those who may request information about persons on the sex offender registry.

3           **SECTION 96.** 343.06 (1) (c) of the statutes is amended to read:

4           343.06 (1) (c) To any person under age 18 unless the person is enrolled in a school  
5 program or high school equivalency program and is not a habitual truant as defined in s. 118.16  
6 (1) (a), has graduated from high school or been granted a declaration of high school graduation  
7 equivalency, or is enrolled in a home-based private educational program, as defined in s.  
8 115.001 (3g), and has satisfactorily completed a course in driver education in public schools  
9 approved by the department of public instruction, or in technical colleges approved by the  
10 technical college system board, or in nonpublic and private schools or tribal schools, defined  
11 in s. 115.001 (15m); that meet the minimum standards set by the department of public  
12 instruction, or has satisfactorily completed a substantially equivalent course in driver training  
13 approved by the department and given by a school licensed by the department under s. 343.61,  
14 or has satisfactorily completed a substantially equivalent course in driver education or training  
15 approved by another state and has attained the age of 16, except as provided in s. 343.07 (1g).  
16 The department shall not issue a license to any person under the age of 18 authorizing the  
17 operation of "Class M" vehicles unless the person has successfully completed a basic rider  
18 course approved by the department. The department may, by rule, exempt certain persons  
19 from the basic rider course requirement of this paragraph. Applicants for a license under s.  
20 343.08 or 343.135 are exempt from the driver education, basic rider or driver training course  
21 requirement. The secretary shall prescribe rules for licensing of schools and instructors to  
22 qualify under this paragraph. The driver education course shall be made available to every

1 eligible student in the state. Except as provided under s. 343.16 (1) (c) and (2) (cm) to (e), no  
2 operator's license may be issued unless a driver's examination has been administered by the  
3 department.

**NOTE:** Allows an individual age 16 or 17 to obtain a driver's license if the individual has taken a driver training course at a tribal school if the course meets DPI minimum standards and all other license criteria are met. See the treatment of s. 115.28 (11), stats., above, and s. 343.16 (1) (c) 3., stats., below.

4 **SECTION 97.** 343.07 (1c) of the statutes is amended to read:

5 343.07 (1c) **DEFINITION.** In this section, "qualified instructor" means a person employed  
6 by a public or private school or by a tribal school, as defined in s. 115.001 (15m), holding an  
7 operator's license and meeting the teaching certification standards of the department of public  
8 instruction or the technical college system board to teach driver education, or an instructor of  
9 a school licensed under s. 343.61, or a teacher or student teacher in a driver education course  
10 for teachers conducted by an institution of higher education.

**NOTE:** Provides that an individual meeting certain credentials and employed by a tribal school is considered to be a qualified instructor to teach a driver education course for purposes of the state driver's license statutes.

11 **SECTION 98.** 343.16 (1) (c) 3. of the statutes is amended to read:

12 343.16 (1) (c) 3. A course in driver education in nonpublic and private schools or tribal  
13 schools, as defined in s. 115.001 (15m), that meets the minimum standards set by the  
14 department of public instruction.

**NOTE:** Permits an instructor of a driver education course in a tribal school to administer part of the driver's license examination. See s. 343.06 (1) (c), stats., above.

15 **SECTION 99.** 447.06 (2) (a) 2. of the statutes is amended to read:

1           447.06 (2) (a) 2. For a school board or a governing body of a private school or of a tribal  
2 school, as defined in s. 115.001 (15m).

NOTE: Current law limits where a dental hygienist may practice. This provision additionally permits a dental hygienist to be employed at or independently contract with a tribal school.

3           **SECTION 100.** 895.48 (1m) (a) (intro.) of the statutes is amended to read:

4           895.48 (1m) (a) (intro.) Except as provided in par. (b), any physician or athletic trainer  
5 licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed under ch. 447,  
6 emergency medical technician licensed under s. 256.15, first responder certified under s.  
7 256.15 (8), physician assistant licensed under ch. 448, registered nurse licensed under ch. 441,  
8 or a massage therapist or bodyworker issued a certificate under ch. 460 who renders voluntary  
9 health care to a participant in an athletic event or contest sponsored by a nonprofit corporation,  
10 as defined in s. 66.0129 (6) (b), a private school, as defined in s. 115.001 (3r), a tribal school,  
11 as defined in s. 115.001 (15m), a public agency, as defined in s. 46.856 (1) (b), or a school,  
12 as defined in s. 609.655 (1) (c), is immune from civil liability for his or her acts or omissions  
13 in rendering that care if all of the following conditions exist:

NOTE: Current law specifies, in pertinent part, that certain health care providers who render free health care at an athletic event at a private school are immune from liability for acts and omissions. The draft extends the immunity under state law if care is rendered at a tribal school's athletic event. Adding immunity under this provision also permits the health care provider who has been significantly exposed to the emergency victim to get the results of HIV tests. Extending immunity under state law does not affect liability under tribal law or whatever right a person may have to raise a defense of tribal sovereign immunity if sued.

14           **SECTION 101.** 895.515 (2) of the statutes is amended to read:

15           895.515 (2) Any person engaged in the sale or use of commercial equipment or  
16 technology, for profit or not for profit, who donates any commercial equipment or technology



1 to a public or private elementary or secondary school, a tribal school, as defined in s. 115.001  
2 (15m), or an institution of higher education or who accepts reimbursement in an amount not  
3 to exceed overhead and transportation costs for any commercial equipment or technology  
4 provided to a public or private elementary or secondary school, to a tribal school, or to an  
5 institution of higher education is immune from civil liability for the death of or injury to an  
6 individual caused by the commercial equipment or technology.

**NOTE:** Current law specifies, in pertinent part, that certain individuals who donate commercial equipment or technology to a private school are immune from civil liability under state law for death or injury caused by the donated equipment or technology. This amendment extends the immunity under state law if the donation is made to a tribal school. Extending immunity under state law does not affect liability under tribal law or whatever right a person may have to raise a defense of tribal sovereign immunity if sued.

7 **SECTION 102.** 938.02 (18e) of the statutes is created to read:

8 938.02 (18e) "Tribal school" has the meaning given in s. 115.001 (15m).

9 **SECTION 103.** 938.34 (7d) (a) 5. of the statutes is created to read:

10 938.34 (7d) (a) 5. Under a contractual agreement with the school district in which the  
11 child resides, an educational program provided by a tribal school.

12 **SECTION 104.** 938.34 (7d) (c) of the statutes is amended to read:

13 938.34 (7d) (c) The court shall order the county department or licensed child welfare  
14 agency responsible for supervising the juvenile to disclose to the school board, technical  
15 college district board, tribal school, or private, nonprofit, nonsectarian agency which is  
16 providing an educational program under par. (a) 3. records or information about the juvenile,  
17 as necessary to assure the provision of appropriate educational services under par. (a).

**NOTE:** Under current law, a delinquency dispositional order, JIPS dispositional order, or a habitual truancy ordinance violation dispositional order may include an order that a juvenile attend an educational program provided by the school district or one of several

programs under contract with the school district. Current law does not include a tribal school.

Section 938.34 (7d) (a) 5., stats., specifies that the court is permitted to order a juvenile to attend a tribal school if the school district has a contract with the tribal school for such placements. Section 938.34 (7d) (c), stats., requires the court to order the supervising agency to disclose information to the tribal school necessary to assure the provision of appropriate educational services. Also see the treatment of ss. 48.345 (12) (a) 5. and (c) and 121.78 (4), stats., above.

1           **SECTION 105.** 938.34 (14t) of the statutes is amended to read:  
2           **938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE**  
3           **ANALOG ON OR NEAR CERTAIN PREMISES.** If the juvenile is adjudicated delinquent under a  
4           violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance  
5           included in schedule I or II under ch. 961, a controlled substance analog of a controlled  
6           substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or  
7           on the premises of a scattered-site public housing project, as defined in s. 961.01 (20i), while  
8           in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or  
9           correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as  
10          defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center,  
11          as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000  
12          feet of any private, tribal, or public school premises, or while in or on or otherwise within 1,000  
13          feet of a school bus, as defined in s. 340.01 (56), the court shall require that the juvenile  
14          participate for 100 hours in a supervised work program or other community service work  
15          under sub. (5g).

**NOTE:** Current statutes provide that if a juvenile is adjudicated delinquent for possessing certain drugs on the premises of or within 1,000 feet of a school, the juvenile court must impose 100 hours of community service work for a public agency or a nonprofit charitable organization in addition to other penalties the court imposes. The draft

specifies that the penalty enhancement also applies for possession on or within 1,000 feet of the premises of a tribal school.

1           **SECTION 106.** 938.342 (1r) of the statutes is amended to read:

2           **938.342 (1r) SCHOOL ATTENDANCE CONDITION.** If school attendance is a condition of an  
3 order under sub. (1d) or (1g), the order shall specify what constitutes a violation of the  
4 condition and shall direct the school board of the school district, or the governing body of the  
5 private school, in which the person is enrolled, or shall request the governing body of the tribal  
6 school in which the person is enrolled, to notify the court or, if the person is under the  
7 supervision of an agency under sub. (1g) (j), the agency that is responsible for supervising the  
8 person, within 5 days after any violation of the condition by the person.

**NOTE:** Under s. 938.342 (1d) and (1g), stats., a court that determined that a juvenile violated a school truancy or habitual truancy ordinance may order the juvenile to attend school. If school attendance is required, current law requires the court to order the school board or the governing body of a private school to notify the court within 5 days of a violation of this condition. The draft requires that the court order request that a tribal school do so.

9           **SECTION 107.** 938.355 (2) (c) of the statutes is amended to read:

10           **938.355 (2) (c)** If school attendance is a condition of an order under par. (b) 7., the order  
11 shall specify what constitutes a violation of the condition and shall direct the school board of  
12 the school district, or the governing body of the private school, in which the juvenile is  
13 enrolled, or shall request the governing body of the tribal school in which the juvenile is  
14 enrolled, to notify the county department that is responsible for supervising the juvenile within  
15 5 days after any violation of the condition by the juvenile.

**NOTE:** Under s. 938.355 (2) (b) 7., stats., a delinquency or JIPS dispositional order may state the conditions with which the juvenile must comply. If school attendance is a condition, current law requires that the order direct the school board or the governing body of a private school to notify the court within 5 days of a violation of this condition. The draft requires that the court order request that a tribal school do so.

1           **SECTION 108.** 938.396 (1) (b) 2. of the statutes is amended to read:

2           938.396 (1) (b) 2. The confidential exchange of information between a law enforcement  
3 agency and officials of the public or private school attended by the juvenile. A public school  
4 official who obtains information under this subdivision shall keep the information  
5 confidential as required under s. 118.125, and a private school official who obtains  
6 information under this subdivision shall keep the information confidential in the same manner  
7 as is required of a public school official under s. 118.125.

8           **SECTION 109.** 938.396 (1) (b) 2m. of the statutes is created to read:

9           938.396 (1) (b) 2m. The confidential exchange of information between a law  
10 enforcement agency and officials of the tribal school attended by the juvenile if the law  
11 enforcement agency determines that enforceable protections are provided by a tribal school  
12 policy or tribal law that requires tribal school officials to keep the information confidential in  
13 a manner at least as stringent as is required of a public school official under s. 118.125.

**NOTE:** Under current law, subject to certain exceptions, law enforcement records relating to juveniles under ch. 938, stats. (juvenile justice code), are confidential. One of the exceptions is for the confidential exchange of information between a law enforcement agency and school officials. However, current law requires that public school officials who obtain information under this exception keep the information confidential as required in s. 118.125, stats. (relating to the confidentiality of pupil records). Current law also requires that private school officials who obtain information under this exception keep the information confidential in the same manner as is required of a public school official.

The draft permits a law enforcement agency to confidentially exchange information with tribal school officials if the law enforcement agency determines that a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in a manner at least as stringent as is required of public and private school officials.

14           **SECTION 110.** 938.396 (1) (c) 3. (intro.), a., c. and d. and 4. of the statutes are amended  
15 to read:

1           938.396 (1) (c) 3. (intro.) ~~A law enforcement agency, on its own initiative or on~~ At the  
2 request of ~~the~~ a school district administrator of a public school district, the, administrator of  
3 a private school, or administrator of a tribal school, or the designee of ~~the~~ a school district  
4 administrator ~~or the~~, private school administrator, or tribal school administrator, or on its own  
5 initiative, a law enforcement agency may, subject to official agency policy, provide to the  
6 school district administrator, private school administrator, or tribal school administrator or  
7 designee, for use as provided in s. 118.127 (2), any information in its records relating to any  
8 of the following if the official agency policy specifies that the information may not be provided  
9 to an administrator of a tribal school or a tribal school administrator's designee unless the  
10 governing body of the tribal school agrees that the information will be used by the tribal school  
11 as provided in s. 118.127 (2):

12           a. The use, possession, or distribution of alcohol or a controlled substance or controlled  
13 substance analog by a juvenile enrolled in the public school district ~~or~~, private school, or tribal  
14 school.

15           c. An act for which a juvenile enrolled in the school district ~~or~~, private school, or tribal  
16 school was taken into custody under s. 938.19 based on a law enforcement officer's belief that  
17 the juvenile was committing or had committed a violation of any state or federal criminal law.

18           d. An act for which a juvenile enrolled in the public school district ~~or~~, private school,  
19 or tribal school was adjudged delinquent.

20           4. A law enforcement agency may enter into an interagency agreement with a school  
21 board, a private school, a tribal school, a social welfare agency, or another law enforcement  
22 agency providing for the routine disclosure of information under subs. (1) (b) 2. and 2m. and  
23 (c) 3. to the school board, private school, tribal school, social welfare agency, or other law  
24 enforcement agency.

**NOTE:** Under current law, a law enforcement agency may, on its own initiative or on the request of a public or private school, disclose certain information to the public or private school. The school is then required to use the information as provided in s. 118.127 (2), stats., which generally prohibits disclosure except to certain individuals. The law enforcement agency may do so only subject to official agency policy.

The draft permits a law enforcement agency to also disclose information, on its own initiative or on request, to a tribal school but requires that the law enforcement agency policy specify that the law enforcement agency cannot provide information to a tribal school unless the governing body of the tribal school agrees that the information will be used by the tribal school in the same manner as public and private schools as provided under s. 118.127 (2), stats., above. The draft also permits a law enforcement agency to enter into an interagency agreement with a tribal school to disclose information under s. 938.396 (1) (b) 2m. and (c) 3., stats.

1           **SECTION 111.** 938.396 (2g) (m) of the statutes is amended to read:

2           938.396 (2g) (m) *Notification of juvenile's school.* 1. If a petition under s. 938.12 or  
3           938.13 (12) is filed alleging that a juvenile has committed a delinquent act that would be a  
4           felony if committed by an adult, the court clerk shall notify the school board of the school  
5           district, ~~or the governing body of the private school,~~ or the governing body of the tribal school  
6           in which the juvenile is enrolled or the designee of the school board or governing body of the  
7           fact that the petition has been filed and the nature of the delinquent act alleged in the petition.  
8           If later the proceeding on the petition is closed, dismissed, or otherwise terminated without  
9           a finding that the juvenile has committed a delinquent act, the court clerk shall notify the  
10          school board of the school district, ~~or the governing body of the private school,~~ or tribal school  
11          in which the juvenile is enrolled or the designee of the school board or governing body that  
12          the proceeding has been terminated without a finding that the juvenile has committed a  
13          delinquent act.

14                 2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after the date  
15          on which the dispositional order is entered, the court clerk shall notify the school board of the

1 school district, ~~or~~ the governing body of the private school, or the governing body of the tribal  
2 school in which the juvenile is enrolled or the designee of the school board or governing body  
3 of the fact that the juvenile has been adjudicated delinquent, the nature of the violation  
4 committed by the juvenile, and the disposition imposed on the juvenile under s. 938.34 as a  
5 result of the violation.

6 3. If school attendance is a condition of a dispositional order under s. 938.342 (1d) or  
7 (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional order is  
8 entered, the clerk of the court assigned to exercise jurisdiction under this chapter and ch. 48  
9 or the clerk of the municipal court exercising jurisdiction under s. 938.17 (2) shall notify the  
10 school board of the school district, ~~or~~ the governing body of the private school, or the  
11 governing body of the tribal school in which the juvenile is enrolled or the designee of the  
12 school board or governing body of the fact that the juvenile's school attendance is a condition  
13 of a dispositional order.

14 4. If a juvenile is found to have committed a delinquent act at the request of or for the  
15 benefit of a criminal gang, as defined in s. 939.22 (9), that would have been a felony under  
16 chs. 939 to 948 or 961 if committed by an adult and is adjudged delinquent on that basis, within  
17 5 days after the date on which the dispositional order is entered, the court clerk shall notify  
18 the school board of the school district, ~~or~~ the governing body of the private school, or the  
19 governing body of the tribal school in which the juvenile is enrolled or the designee of the  
20 school board or governing body of the fact that the juvenile has been adjudicated delinquent  
21 on that basis, the nature of the violation committed by the juvenile, and the disposition  
22 imposed on the juvenile under s. 938.34 as a result of that violation.

23 5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is adjudicated  
24 delinquent and as a result of the dispositional order is enrolled in a different school district ~~or~~,

1 private school, or tribal school from the school district ~~or~~, private school, or tribal school in  
2 which the juvenile is enrolled at the time of the dispositional order, the court clerk, within 5  
3 days after the date on which the dispositional order is entered, shall provide the school board  
4 of the juvenile's new school district, the governing body of the juvenile's new private school,  
5 or the governing body of the tribal school or the designee of the school board or governing  
6 body with the information specified in subd. 2. or 4., whichever is applicable, and, in addition,  
7 shall notify that school board, governing body, or designee of whether the juvenile has been  
8 adjudicated delinquent previously by that court, the nature of any previous violations  
9 committed by the juvenile, and the dispositions imposed on the juvenile under s. 938.34 as a  
10 result of those previous violations.

11 6. Except as required under subds. 1. to 5. or by order of the court, no information from  
12 the juvenile's court records may be disclosed to the school board of the school district, ~~or~~ the  
13 governing body of the private school, or the governing body of the tribal school in which the  
14 juvenile is enrolled or the designee of the school board or governing body. Any information  
15 from a juvenile's court records provided to the school board of the school district, or the  
16 governing body of the private school, in which the juvenile is enrolled or the designee of the  
17 school board or governing body shall be disclosed by the school board, governing body, or  
18 designee to employees of the school district or private school who work directly with the  
19 juvenile or who have been determined by the school board, governing body, or designee to  
20 have legitimate educational interests, including safety interests, in the information. A school  
21 district or private school employee to whom that information is disclosed may not further  
22 disclose the information. If information is disclosed to the governing body of a tribal school  
23 under this subdivision, the court shall request that the governing body of the tribal school or  
24 its designee disclose the information to employees who work directly with the juvenile or who



1 have been determined by the governing body or its designee to have legitimate educational  
2 interests, including safety interests, in the information, and shall further request that the  
3 governing body prohibit any employee to whom information is disclosed under this  
4 subdivision from further disclosing the information. A school board may not use any  
5 information from a juvenile's court records as the sole basis for expelling or suspending a  
6 juvenile or as the sole basis for taking any other disciplinary action, including action under  
7 the school district's athletic code, against the juvenile. A member of a school board or of the  
8 governing body of a private school or tribal school or an employee of a school district ~~or~~  
9 private school, or tribal school may not be held personally liable for any damages caused by  
10 the nondisclosure of any information specified in this subdivision unless the member or  
11 employee acted with actual malice in failing to disclose the information. A school district ~~or~~  
12 private school, or tribal school may not be held liable for any damages caused by the  
13 nondisclosure of any information specified in this subdivision unless the school district,  
14 private school, or tribal school or its agent acted with gross negligence or with reckless,  
15 wanton, or intentional misconduct in failing to disclose the information.

**NOTE:** Under current law, juvenile court records relating to ch. 938 proceedings are confidential unless an exception is specified in the statutes. Those exceptions include a requirement that the clerk of juvenile court notify the school board of the school district or the governing body of a private school, or their designee, of certain matters relating to a juvenile delinquency or JIPS proceeding or adjudication. The draft additionally requires that the clerk notify the governing body of a tribal school, or its designee, of those matters.

Current law requires that the school board or governing body of a private school disclose this information to employees who work directly with the juvenile or who have been determined by the governing body, or its designee, to have legitimate educational interests, including safety interests, in the information. Current law prohibits the employee from further disclosing this information. The draft requires the court to request that the governing body of a tribal school, or its designee,

disclose the information to those employees and request that the governing body prohibit those employees from further disclosing the information. The draft extends the immunity protections under state law to employees of the tribal school.

Extending the immunity protections to employees of the tribal school does not affect liability under tribal law or whatever right tribal school employees may have to raise a defense of tribal sovereign immunity if sued for redisclosure of the information.

1           **SECTION 112.** 938.78 (2) (b) of the statutes is amended to read:

2           938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of  
3 information between an agency and another social welfare agency, a law enforcement agency,  
4 the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district  
5 or a private school regarding an individual in the care or legal custody of the agency. A social  
6 welfare agency that obtains information under this paragraph shall keep the information  
7 confidential as required under this section and s. 48.78. A law enforcement agency that  
8 obtains information under this paragraph shall keep the information confidential as required  
9 under ss. 48.396 (1) and 938.396 (1) (a). A public school that obtains information under this  
10 paragraph shall keep the information confidential as required under s. 118.125, and a private  
11 school that obtains information under this paragraph shall keep the information confidential  
12 in the same manner as is required of a public school under s. 118.125. Paragraph (a) does not  
13 apply to the confidential exchange of information between an agency and officials of a tribal  
14 school regarding an individual in the care or legal custody of the agency if the agency  
15 determines that enforceable protections are provided by a tribal school policy or tribal law that  
16 requires tribal school officials to keep the information confidential in a manner at least as  
17 stringent as is required of a public school official under s. 118.125.

18           1m. An agency may enter into an interagency agreement with a school board, a private  
19 school, a tribal school, a law enforcement agency, or another social welfare agency providing

1 for the routine disclosure of information under subd. 1. to the school board, private school,  
2 tribal school, law enforcement agency, or other social welfare agency.

3 2. On petition of an agency to review pupil records, as defined in s. 118.125 (1) (d), other  
4 than pupil records that may be disclosed without court order under s. 118.125 (2) or (2m), for  
5 the purpose of providing treatment or care for an individual in the care or legal custody of the  
6 agency, the court may order the school board of the school district, or the governing body of  
7 the private school, in which an individual is enrolled to disclose to the agency the pupil records  
8 of the individual as necessary for the agency to provide that treatment or care. The court may  
9 request the governing body of the tribal school in which an individual is enrolled to disclose  
10 to the agency the pupil records of the individual as necessary for the agency to provide that  
11 treatment or care. The agency may use the pupil records only for the purpose of providing  
12 treatment or care and may make the pupil records available only to employees of the agency  
13 who are providing treatment or care for the individual.

**NOTE:** Section 938.78, stats., provides that, subject to certain exceptions, the Department of Corrections, a county department of human services or county department of social services, or a licensed child welfare agency (collectively referred to as agency) must keep its ch. 938 records confidential. Section 938.78 (2) (b), stats., provides the exception that permits the confidential exchange of information with a public or private school which is then required to keep the information confidential if required to do so under the pupil records statute.

The draft permits an agency to confidentially exchange information with a tribal school if the agency determines that a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in a manner at least as stringent as is required of public and private school officials. The draft also permits interagency agreements for the disclosure of information to include tribal schools and permits the court to request a tribal school to disclose information necessary for the agency to provide care and treatment.

14 **SECTION 113.** 939.632 (1) (a) and (d) 3. of the statutes are amended to read:

1           939.632 (1) (a) "School" means a public school, parochial or private school, or tribal  
2 school, as defined in s. 115.001 (15m), that provides an educational program for one or more  
3 grades between grades 1 and 12 and that is commonly known as an elementary school, middle  
4 school, junior high school, senior high school, or high school.

5           (d) 3. On a school bus or public transportation transporting students to and from a public  
6 or private school or to and from a tribal school, as defined in s. 115.001 (15m).

NOTE: Current statutes provide an enhanced penalty for violent crimes committed in a school zone, which includes on the premises of or within 1,000 feet of the school premises, on a school bus or public transportation transporting pupils to and from school, and at school bus stops. The draft adds tribal schools to the definition of a "school" for the purpose of the penalty enhancement.

7           **SECTION 114.** 944.21 (8) (b) 2. of the statutes is amended to read:

8           944.21 (8) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as  
9 defined in s. 115.001 (15m).

NOTE: Provides that an employee, member of the board of directors, or trustee of a tribal school, while in his or her capacity as such, may not be prosecuted under s. 944.21, stats. (crimes relating to obscene materials or performance).

10          **SECTION 115.** 948.095 (1) (a) of the statutes is amended to read:

11          948.095 (1) (a) "School" means a public or private elementary or secondary school, or  
12 a tribal school, as defined in s. 115.001 (15m).

NOTE: Current statutes provide that it is a class H felony for school staff at a public or private school to have sexual contact or sexual intercourse with a child who is age 16 or 17. The draft adds tribal schools to the definition of "school" for this purpose. (Current law also provides that it is a class H felony for a person age 21 or older who works or volunteers with children to have sexual contact or sexual intercourse with a 16- or 17-year old child with whom the person works or interacts as a volunteer.)

13          **SECTION 116.** 948.11 (4) (b) 2. of the statutes is amended to read:

1           948.11 (4) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as  
2 defined in s. 115.001 (15m).

**NOTE:** Provides that an employee, member of the board of directors, or trustee of a tribal school, while in his or her capacity as such, may not be prosecuted under s. 948.11, stats. (crimes relating to exposing a child to harmful material or harmful descriptions or narrations).

3           **SECTION 117.** 948.50 (2) (a) of the statutes is amended to read:

4           948.50 (2) (a) "School" means a public school, parochial or private school, or tribal  
5 school, as defined in s. 115.001 (15m), which provides an educational program for one or more  
6 grades between kindergarten and grade 12 and which is commonly known as a kindergarten,  
7 elementary school, middle school, junior high school, senior high school, or high school.

**NOTE:** Current statutes provide a criminal penalty for strip searches of pupils by school employees. The draft adds tribal schools to the definition of school for this purpose. (Section 118.32, stats. (prohibiting strip searches), refers to schools without further definition, and the definition is supplied by s. 948.50, stats.)

8           **SECTION 118.** 948.61 (1) (b) of the statutes is amended to read:

9           948.61 (1) (b) "School" means a public school, parochial or private school, or tribal  
10 school, as defined in s. 115.001 (15m), which provides an educational program for one or more  
11 grades between grades 1 and 12 and which is commonly known as an elementary school,  
12 middle school, junior high school, senior high school, or high school.

**NOTE:** Current law in s. 948.61, stats., provides a criminal penalty for possessing (subject to certain exceptions) certain dangerous weapons other than firearms on school premises. Current law in s. 948.605, stats., prohibits (subject to certain exceptions) possession of a firearm in or on the grounds of a school or within 1,000 feet of a school (school zone) and provides certain criminal penalties under certain circumstances for the discharge of a firearm in a school zone. The draft adds tribal schools to the definition of "school" for both of these statutes inasmuch as s. 948.605, stats., cross-references the definition in s. 948.61, stats. Under s. 938.34 (14q), stats., additional consequences for a delinquency disposition also may apply for firearms violation on school premises.

Under s. 973.137, stats., information about a conviction must be forwarded to DOT.

1           **SECTION 119.** 961.49 (1m) (b) 6. of the statutes is amended to read:

2           961.49 (1m) (b) 6. Any private or public school premises and any premises of a tribal  
3           school, as defined in s. 115.001 (15m).

NOTE: Current statutes provide a criminal penalty for possessing controlled substances (certain drugs) on or within 1,000 feet of a school. The draft specifies that possession on or within 1,000 feet of the premises of a tribal school is included in that crime.

4           **SECTION 120.** 961.495 of the statutes is amended to read:

5           **961.495 Possession or attempted possession of a controlled substance on or near**  
6           **certain places.** If any person violates s. 961.41 (3g) by possessing or attempting to possess  
7           a controlled substance included in schedule I or II, a controlled substance analog of a  
8           controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on  
9           the premises of a scattered-site public housing project, while in or on or otherwise within  
10          1,000 feet of a state, county, city, village, or town park, a jail or correctional facility, a multiunit  
11          public housing project, a swimming pool open to members of the public, a youth center or a  
12          community center, while in or on or otherwise within 1,000 feet of any private or public school  
13          premises or of any premises of a tribal school, as defined in s. 115.001 (15m), or while in or  
14          on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall,  
15          in addition to any other penalties that may apply to the crime, impose 100 hours of community  
16          service work for a public agency or a nonprofit charitable organization. The court shall ensure  
17          that the defendant is provided a written statement of the terms of the community service order  
18          and that the community service order is monitored. Any organization or agency acting in good  
19          faith to which a defendant is assigned pursuant to an order under this section has immunity

1 from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the  
2 defendant.

**NOTE:** Current statutes provide that for possessing certain drugs on the premises of or within 1,000 feet of a school, the court must additionally impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The draft specifies that the penalty enhancement also applies for possession on or within 1,000 feet of the premises of a tribal school.

3 **SECTION 121. Initial applicability.**

4 (1) The treatment of sections 15.377 (4) (f) and (8) (c) 14. and 15.57 (3) of the statutes  
5 first applies to appointments made on the effective date of this subsection.

6 (2) The treatment of section 45.20 (2) (a) 1., (c) 1., and (d) 1. of the statutes first applies  
7 to courses completed on the effective date of this subsection.

8 (3) The treatment of sections 48.345 (12) (a) 5., 48.355 (2) (c), 938.34 (7d) (a) 5.,  
9 938.342 (1r), 938.355 (2) (c), and 938.396 (2g) (m) 2. to 6. of the statutes first applies to  
10 dispositional orders issued on the effective date of this subsection.

11 (4) The treatment of section 938.396 (2g) (m) 1. of the statutes first applies to petitions  
12 filed on the effective date of this subsection.

13

(END)

12/30/08

TC w/ Joyce Kied

A to  
any  
from 9-12

- 1. Sec. 14: I'm not sure why this section is being amended. Does "school pupils" exclude tribal school pupils? If we explicitly include tribal school pupils, should we also include private school pupils?
- 2. Sec. 16: Same questions as item #1.
- 3. Sec. 18: Same questions as item #1.
- 4. Secs. 27 and 28: "high school" and "operating high school grades" could be different. Is that OK?
- 5. Sec. 38: Same questions as item #1.
- 6. Sec. 48, treatment of s. 115.28 (7) (b): The way the paragraph is amended, "tribal schools" are included in some spots, but not all. Is there an implication that licenses *are* required in tribal schools? Also, not sure I understand the reasoning in the Note. Why not clarify that *state law* does not require it?
- 7. Sec. 55: In s. 115.365 (1), shouldn't this be either "public, private, and tribal schools" or "public schools, private schools, and tribal schools"? Also, note I deleted (2) (intro.) from the draft because it's not being amended.
- 8. Sec. 63: It looks like "tribal" modifies "schools, agencies, and organizations." If that's not your intent, maybe we should change it to "public, private, and tribal schools, and public and private agencies and organizations."
- 9. Sec. 71: What's the rationale for adding "or principal"? Does this change the law as it relates to private schools?
- 10. Sec. 75: the problem is that "child between the ages of 6 and 18 who is a resident of the school district" is already covered by par. (e). In other words, the attendance officer already has access to information regarding all children who fit that description. Perhaps par. (e) should begin "Except as provided in par (em)," Also, should "located in the school district" be added at the end of par. (em)?
- 11. Sec. 81: Shouldn't "or" be "and"?
- 12. Sec. 84: In par. (s), I've rewritten this so it reads "Such other facts and statistics in relation to the schools, public or, private, or tribal schools in the school district...." OK?
- 13. Sec. 91: Not sure why the additional "any's" are needed here. I'd delete them.
- 14. Sec. 97: I think I'd change this so it reads "...means a person employed by a public ~~or~~ school, private school, or tribal school, as defined..." Also, what do you think of putting a semicolon after "driver education" and after "343.61"?

see A's →

~~sec. 98: nonpublic or private schools ...~~  
~~but really, why "nonpublic"?~~  
 (same q. in sec. 96)

change all circled items.