



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 04 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.

a.r. 84 X

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

2 120.18 (1) (a) 2. Adding the number of persons under this paragraph who were
3 residents of the school district and were enrolled in the school district on the 3rd
4 Friday of September of the previous school year; plus the number of persons under
5 this paragraph who were residents of the school district and who were enrolled in
6 private schools, tribal schools, home-based private educational programs, or other
7 school districts on the 3rd Friday of September of the previous school year; plus the
8 number or an estimate of the number of those persons under this paragraph who
9 were residents of the school district and not enrolled in the school district, private
10 schools, tribal schools, home-based private educational programs, or other school
11 districts on the 3rd Friday of September of the previous school year.

12 (s) Such other facts and statistics in relation to the ~~schools~~, public or, private
13 ~~or tribal schools~~ ^{or tribal schools} 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.)

bill

a.r. 85 X

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

15 121.05 (1) (a) 7. Pupils enrolled in a nonsectarian private school or program or
16 tribal 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.

a.r. 86

bill

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

18 121.76 (1) (a) "Agency of service" means a school board, board of control of a
19 cooperative educational service agency, county children with disabilities education

1 board, or governing body of a nonsectarian private school or, university model school,
 2 or tribal school, 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.

a.s.g.

bill x2

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

4 121.76 (2) (c) The agency of service, other than a tribal school, shall rebate a
 5 proportional share of state or federal aid received for pupils for whom it received
 6 tuition. The rebate shall be paid to the agency or person who paid the tuition within
 7 30 days of its receipt by the agency of service.

bill x2

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.

a.s.g.

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

9 121.78 (4) COURT-ORDERED EDUCATIONAL SERVICES. If a pupil is receiving
 10 educational services as the result of a court order under s. 48.345 (12) or 938.34 (7d),
 11 the school board of the school district in which the pupil resided at the time of
 12 issuance of the court order shall pay tuition for the pupil. A school board paying
 13 tuition for a pupil under this subsection shall count the pupil as 1.0 pupil in
 14 membership for general aid under subch. II. The school board shall pay each agency
 15 specified under s. 48.345 (12) (a) 2. to 4. or 938.34 (7d) (a) 2. to 4., for each full-time
 16 equivalent pupil served by the agency, an amount equal to at least 80% of the average

1 per pupil cost for the school district. No state aid may be paid to the technical college
 2 district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34
 3 (7d) (a) 4. The minimum amount paid by a school board to a tribal school specified
 4 under s. 48.345 (12) (a) 5. or 938.34 (7d) (a) 5., for each full-time equivalent pupil
 5 served by the tribal school, shall be determined by multiplying the average per pupil
 6 cost for the school district by 0.8 and then subtracting any federal or state aid
 7 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.

bill

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.

a.1.89

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

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

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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

bill

bill

bill

for the pupil

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.

A.F. 90

bill

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,
3 or a tribal school, as defined in s. 115.001 (15m), which provides an educational
4 program for one or more grades between grades 1 and 12 and which is commonly
5 known as an elementary school, middle school, junior high school, senior high school,
6 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.

A.F. 91

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

10
11

8 125.68 (3) RESTRICTIONS ON LOCATION. (intro.) No "Class A" or "Class B" license
9 or permit may be issued for premises the main entrance of which is less than 300 feet
10 from the main entrance of any^a public or parochial school, any tribal school, as defined
11 in s 115.001 (15m), any hospital, or any church, except that this prohibition may be
12 waived by a majority vote of the governing body of the municipality in which the
13 premises is located. The distance shall be measured by the shortest route along the
14 highway from the main entrance of the school, church, or hospital to the main
15 entrance of the premises covered by the license or permit. The prohibition in this
16 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.

A.F. 92

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

18 252.15 (1) (ab) "Affected person" means an emergency medical technician; first
19 responder; fire fighter; peace officer; correctional officer; person who is employed at
20 a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential

1 care center for children and youth, as defined in s. 938.02 (15g); state patrol officer;
2 jailer, keeper of a jail, or person designated with custodial authority by the jailer or
3 keeper; health care provider; employee of a health care provider; staff member of a
4 state crime laboratory; social worker; or employee of a school district, cooperative
5 educational service agency, charter school, private school, tribal school, as defined
6 in s. 115.001 (15m), the Wisconsin Educational Services Program for the Deaf and
7 Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired.

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

1 involving an individual; who is significantly exposed to the individual may subject
 2 the individual's blood to a test or a series of tests for the presence of HIV, antigen or
 3 nonantigenic products of HIV or an antibody to HIV and may receive disclosure of
 4 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.

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

6 255.30 (4) The state superintendent of public instruction shall prepare and
 7 circulate to each public and private educational institution and to each tribal school,
 8 as defined in s. 115.001 (15m), in this state instructions and recommendations for
 9 implementing the eye 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.

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

11 301.45 (1d) (c) "Student" means a person who is enrolled on a full-time or
 12 part-time basis in any public ~~or~~ private, or tribal educational institution, including
 13 a secondary school, a business, trade, technical or vocational school, or an institution
 14 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:

16 301.46 (4) (a) 1. A public or private elementary or secondary school or a tribal
 17 school, 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.

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

1 343.06 (1) (c) To any person under age 18 unless the person is enrolled in a
2 school program or high school equivalency program and is not a habitual truant as
3 defined in s. 118.16 (1) (a), has graduated from high school or been granted a
4 declaration of high school graduation equivalency, or is enrolled in a home-based
5 private educational program, as defined in s. 115.001 (3g), and has satisfactorily
6 completed a course in driver education in public schools approved by the department
7 of public instruction, or in technical colleges approved by the technical college system
8 board, or in nonpublic and private schools or tribal schools, ⁶⁵ defined in s. 115.001
9 (15m), that meet the minimum standards set by the department of public
10 instruction, or has satisfactorily completed a substantially equivalent course in
11 driver training approved by the department and given by a school licensed by the
12 department under s. 343.61, or has satisfactorily completed a substantially
13 equivalent course in driver education or training approved by another state and has
14 attained the age of 16, except as provided in s. 343.07 (1g). The department shall not
15 issue a license to any person under the age of 18 authorizing the operation of "Class
16 M" vehicles unless the person has successfully completed a basic rider course
17 approved by the department. The department may, by rule, exempt certain persons
18 from the basic rider course requirement of this paragraph. Applicants for a license
19 under s. 343.08 or 343.135 are exempt from the driver education, basic rider or driver
20 training course requirement. The secretary shall prescribe rules for licensing of
21 schools and instructors to qualify under this paragraph. The driver education course
22 shall be made available to every eligible student in the state. Except as provided
23 under s. 343.16 (1) (c) and (2) (cm) to (e), no operator's license may be issued unless
24 a driver's examination has been administered by the 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 (1), stats., above, and s. 343.16 (1) (c) 3., stats., below.

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

2 343.07 (1c) DEFINITION. In this section, "qualified instructor" means a person
3 employed by a public or private school, or ~~tribal~~ tribal school, as defined in s. 115.001
4 (15m), holding an operator's license and meeting the teaching certification standards
5 of the department of public instruction or the technical college system board to teach
6 driver education, or an instructor of a school licensed under s. 343.61, or a teacher
7 or student teacher in a driver education course for teachers conducted by an
8 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.

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

10 343.16 (1) (c) 3. A course in driver education in nonpublic and private schools
11 or tribal schools, as defined in s. 115.001 (15m), that meets the minimum standards
12 set by the 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.

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

14 447.06 (2) (a) 2. For a school board or a governing body of a private school or
15 of a tribal 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.

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

17 895.48 (1m) (a) (intro.) Except as provided in par. (b), any physician or athletic
18 trainer licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed

1 under ch. 447, emergency medical technician licensed under s. 256.15, first
2 responder certified under s. 256.15 (8), physician assistant licensed under ch. 448,
3 registered nurse licensed under ch. 441, or a massage therapist or bodyworker issued
4 a certificate under ch. 460 who renders voluntary health care to a participant in an
5 athletic event or contest sponsored by a nonprofit corporation, as defined in s.
6 66.0129 (6) (b), a private school, as defined in s. 115.001 (3r), a tribal school, as
7 defined in s. 115.001 (15m), a public agency, as defined in s. 46.856 (1) (b), or a school,
8 as defined in s. 609.655 (1) (c), is immune from civil liability for his or her acts or
9 omissions 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.

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

11 895.515 (2) Any person engaged in the sale or use of commercial equipment or
12 technology, for profit or not for profit, who donates any commercial equipment or
13 technology to a public or private elementary or secondary school, a tribal school, as
14 defined in s. 115.001 (15m), or an institution of higher education or who accepts
15 reimbursement in an amount not to exceed overhead and transportation costs for any
16 commercial equipment or technology provided to a public or private elementary or
17 secondary school, to a tribal school, or to an institution of higher education is immune
18 from civil liability for the death of or injury to an individual caused by the commercial
19 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

SECTION 101

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.

h.f. 102

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

2 938.02 (18e) "Tribal school" has the meaning given in s. 115.001 (15m).

h.f. 103

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

4 938.34 (7d) (a) 5. Under a contractual agreement with the school district in
5 which the child resides, an educational program provided by a tribal school.

h.f. 104

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

7 938.34 (7d) (c) The court shall order the county department or licensed child
8 welfare agency responsible for supervising the juvenile to disclose to the school
9 board, technical college district board, tribal school, or private, nonprofit,
10 nonsectarian agency which is providing an educational program under par. (a) 3.
11 records or information about the juvenile, as necessary to assure the provision of
12 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.

h.f. 105

13 SECTION 105. 938.34 (14t) of the statutes is amended to read:

14 938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
15 ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under
16 a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled
17 substance included in schedule I or II under ch. 961, a controlled substance analog
18 of a controlled substance included in schedule I or II under ch. 961 or ketamine or

1 flunitrazepam while in or on the premises of a scattered-site public housing project,
 2 as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state,
 3 county, city, village, or town park, a jail or correctional facility, as defined in s. 961.01
 4 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming
 5 pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a
 6 community center, while in or on or otherwise within 1,000 feet of any private, tribal,
 7 or public school premises, or while in or on or otherwise within 1,000 feet of a school
 8 bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate
 9 for 100 hours in a supervised work program or other community service work under
 10 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.

bill

u.s. 106

11 **SECTION 106.** 938.342 (1r) of the statutes is amended to read:
 12 938.342 (1r) SCHOOL ATTENDANCE CONDITION. If school attendance is a condition
 13 of an order under sub. (1d) or (1g), the order shall specify what constitutes a violation
 14 of the condition and shall direct the school board of the school district, or the
 15 governing body of the private school, in which the person is enrolled, or shall request
 16 the governing body of the tribal school in which the person is enrolled, to notify the
 17 court or, if the person is under the supervision of an agency under sub. (1g) (j), the
 18 agency that is responsible for supervising the person, within 5 days after any
 19 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

legisive

violation of this condition. The draft requires that the court order request that a tribal school do so.

u.s. 1/17

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

1 938.355 (2) (c) If school attendance is a condition of an order under par. (b) 7.,

2 the order shall specify what constitutes a violation of the condition and shall direct

3 the school board of the school district, or the governing body of the private school, in

4 which the juvenile is enrolled, or shall request the governing body of the tribal school

5 in which the juvenile is enrolled, to notify the county department that is responsible

6 for supervising the juvenile within 5 days after any violation of the condition by the

7 juvenile.

8

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.

five

bill

u.s. 1/18

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

9 938.396 (1) (b) 2. The confidential exchange of information between a law

10 enforcement agency and officials of the public or private school attended by the

11 juvenile. A public school official who obtains information under this subdivision

12 shall keep the information confidential as required under s. 118.125, and a private

13 school official who obtains information under this subdivision shall keep the

14 information confidential in the same manner as is required of a public school official

15 under s. 118.125.

16

u.s. 1/19

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

17 938.396 (1) (b) 2m. The confidential exchange of information between a law

18 enforcement agency and officials of the tribal school attended by the juvenile if the

19 law enforcement agency determines that enforceable protections are provided by a

20 tribal school policy or tribal law that requires tribal school officials to keep the

21

1 information confidential in a manner at least as stringent as is required of a public
2 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.

a.r. 110

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

5 938.396 (1) (c) 3. (intro.) ~~A law enforcement agency, on its own initiative or on~~
6 At the request of the a school district administrator of a public school district, the,
7 administrator of a private school, or administrator of a tribal school, or the designee
8 of the a school district administrator or the, private school administrator, or tribal
9 school administrator, or on its own initiative, a law enforcement agency may, subject
10 to official agency policy, provide to the school district administrator, private school
11 administrator, or tribal school administrator or designee, for use as provided in s.
12 118.127 (2), any information in its records relating to any of the following if the
13 official agency policy specifies that the information may not be provided to an
14 administrator of a tribal school or a tribal school administrator's designee unless the
15 governing body of the tribal school agrees that the information will be used by the
16 tribal school as provided in s. 118.127 (2):

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

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

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

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

a.f. III

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

16 938.396 (2g) (m) *Notification of juvenile's school.* 1. If a petition under s. 938.12
17 or 938.13 (12) is filed alleging that a juvenile has committed a delinquent act that
18 would be a felony if committed by an adult, the court clerk shall notify the school

1 board of the school district, ~~or~~ the governing body of the private school, or the
2 governing body of the tribal school in which the juvenile is enrolled or the designee
3 of the school board or governing body of the fact that the petition has been filed and
4 the nature of the delinquent act alleged in the petition. If later the proceeding on the
5 petition is closed, dismissed, or otherwise terminated without a finding that the
6 juvenile has committed a delinquent act, the court clerk shall notify the school board
7 of the school district, or the governing body of the private school, or tribal school in
8 which the juvenile is enrolled or the designee of the school board or governing body
9 that the proceeding has been terminated without a finding that the juvenile has
10 committed a delinquent act.

11 2. Subject to subd. 4., if a juvenile is adjudged delinquent, within 5 days after
12 the date on which the dispositional order is entered, the court clerk shall notify the
13 school board of the school district, ~~or~~ the governing body of the private school, or the
14 governing body of the tribal school in which the juvenile is enrolled or the designee
15 of the school board or governing body of the fact that the juvenile has been
16 adjudicated delinquent, the nature of the violation committed by the juvenile, and
17 the disposition imposed on the juvenile under s. 938.34 as a result of the violation.

18 3. If school attendance is a condition of a dispositional order under s. 938.342
19 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which the dispositional
20 order is entered, the clerk of the court assigned to exercise jurisdiction under this
21 chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under
22 s. 938.17 (2) shall notify the school board of the school district, ~~or~~ the governing body
23 of the private school, or the governing body of the tribal school in which the juvenile
24 is enrolled or the designee of the school board or governing body of the fact that the
25 juvenile's school attendance is a condition of a dispositional order.

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

11 5. In addition to the disclosure made under subd. 2. or 4., if a juvenile is
12 adjudicated delinquent and as a result of the dispositional order is enrolled in a
13 different school district ~~or, private school, or tribal school~~ from the school district ~~or,~~
14 ~~private school, or tribal school~~ in which the juvenile is enrolled at the time of the
15 dispositional order, the court clerk, within 5 days after the date on which the
16 dispositional order is entered, shall provide the school board of the juvenile's new
17 school district, the governing body of the juvenile's new private school, or the
18 governing body of the tribal school or the designee of the school board or governing
19 body with the information specified in subd. 2. or 4., whichever is applicable, and, in
20 addition, shall notify that school board, governing body, or designee of whether the
21 juvenile has been adjudicated delinquent previously by that court, the nature of any
22 previous violations committed by the juvenile, and the dispositions imposed on the
23 juvenile under s. 938.34 as a result of those previous violations.

24 6. Except as required under subds. 1. to 5. or by order of the court, no
25 information from the juvenile's court records may be disclosed to the school board of

1 the school district, ~~or~~ the governing body of the private school, or the governing body
2 of the tribal school in which the juvenile is enrolled or the designee of the school board
3 or governing body. Any information from a juvenile's court records provided to the
4 school board of the school district, or the governing body of the private school, in
5 which the juvenile is enrolled or the designee of the school board or governing body
6 shall be disclosed by the school board, governing body, or designee to employees of
7 the school district or private school who work directly with the juvenile or who have
8 been determined by the school board, governing body, or designee to have legitimate
9 educational interests, including safety interests, in the information. A school district
10 or private school employee to whom that information is disclosed may not further
11 disclose the information. If information is disclosed to the governing body of a tribal
12 school under this subdivision, the court shall request that the governing body of the
13 tribal school or its designee disclose the information to employees who work directly
14 with the juvenile or who have been determined by the governing body or its designee
15 to have legitimate educational interests, including safety interests, in the
16 information, and shall further request that the governing body prohibit any
17 employee to whom information is disclosed under this subdivision from further
18 disclosing the information. A school board may not use any information from a
19 juvenile's court records as the sole basis for expelling or suspending a juvenile or as
20 the sole basis for taking any other disciplinary action, including action under the
21 school district's athletic code, against the juvenile. A member of a school board or of
22 the governing body of a private school or tribal school or an employee of a school
23 district ~~or~~, private school, or tribal school may not be held personally liable for any
24 damages caused by the nondisclosure of any information specified in this subdivision
25 unless the member or employee acted with actual malice in failing to disclose the

1 information. A school district ~~or~~, private school, or tribal school may not be held liable
 2 for any damages caused by the nondisclosure of any information specified in this
 3 subdivision unless the school district, private school, or tribal school or its agent
 4 acted with gross negligence or with reckless, wanton, or intentional misconduct in
 5 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.

bill

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.

a.r. 112

6 **SECTION 112.** 938.78 (2) (b) of the statutes is amended to read:
 7 938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of
 8 information between an agency and another social welfare agency, a law
 9 enforcement agency, the victim-witness coordinator, a fire investigator under s.
 10 165.55 (15), a public school district or a private school regarding an individual in the
 11 care or legal custody of the agency. A social welfare agency that obtains information
 12 under this paragraph shall keep the information confidential as required under this
 13 section and s. 48.78. A law enforcement agency that obtains information under this
 14 paragraph shall keep the information confidential as required under ss. 48.396 (1)
 15 and 938.396 (1) (a). A public school that obtains information under this paragraph

1 shall keep the information confidential as required under s. 118.125, and a private
2 school that obtains information under this paragraph shall keep the information
3 confidential in the same manner as is required of a public school under s. 118.125.
4 Paragraph (a) does not apply to the confidential exchange of information between an
5 agency and officials of a tribal school regarding an individual in the care or legal
6 custody of the agency if the agency determines that enforceable protections are
7 provided by a tribal school policy or tribal law that requires tribal school officials to
8 keep the information confidential in a manner at least as stringent as is required of
9 a public school official under s. 118.125.

10 1m. An agency may enter into an interagency agreement with a school board,
11 a private school, a tribal school, a law enforcement agency, or another social welfare
12 agency providing for the routine disclosure of information under subd. 1. to the school
13 board, private school, tribal school, law enforcement agency, or other social welfare
14 agency.

15 2. On petition of an agency to review pupil records, as defined in s. 118.125 (1)
16 (d), other than pupil records that may be disclosed without court order under s.
17 118.125 (2) or (2m), for the purpose of providing treatment or care for an individual
18 in the care or legal custody of the agency, the court may order the school board of the
19 school district, or the governing body of the private school, in which an individual is
20 enrolled to disclose to the agency the pupil records of the individual as necessary for
21 the agency to provide that treatment or care. The court may request the governing
22 body of the tribal school in which an individual is enrolled to disclose to the agency
23 the pupil records of the individual as necessary for the agency to provide that
24 treatment or care. The agency may use the pupil records only for the purpose of

- 1 providing treatment or care and may make the pupil records available only to
- 2 employees of the agency 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~~ ^{bill} 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.

a.r. 113

- 3 SECTION 113. 939.632 (1) (a) and (d) 3. of the statutes are amended to read:
- 4 939.632 (1) (a) "School" means a public school, parochial or private school, or
- 5 tribal school, as defined in s. 115.001 (15m), that provides an educational program
- 6 for one or more grades between grades 1 and 12 and that is commonly known as an
- 7 elementary school, middle school, junior high school, senior high school, or high
- 8 school.
- 9 (d) 3. On a school bus or public transportation transporting students to and
- 10 from a public or private school or to and from a tribal school, as defined in s. 115.001
- 11 (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~~ ^{bill} adds tribal schools to the definition of a "school" for the purpose of the penalty enhancement.

a.r. 114

- 12 SECTION 114. 944.21 (8) (b) 2. of the statutes is amended to read:
- 13 944.21 (8) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school,
- 14 as 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).

1 ^{A.F. 115} SECTION 115. 948.095 (1) (a) of the statutes is amended to read:
2 948.095 (1) (a) "School" means a public or private elementary or secondary
3 school, or 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.)

bill
A.F. 116

4 SECTION 116. 948.11 (4) (b) 2. of the statutes is amended to read:
5 948.11 (4) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school,
6 as 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).

^{A.F. 117}
7 SECTION 117. 948.50 (2) (a) of the statutes is amended to read:
8 948.50 (2) (a) "School" means a public school, parochial or private school, or
9 tribal school, as defined in s. 115.001 (15m), which provides an educational program
10 for one or more grades between kindergarten and grade 12 and which is commonly
11 known as a kindergarten, elementary school, middle school, junior high school,
12 senior high school, or high school. (bill)

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. de)

A.F. 118

13 SECTION 118. 948.61 (1) (b) of the statutes is amended to read:
14 948.61 (1) (b) "School" means a public school, parochial or private school, or
15 tribal school, as defined in s. 115.001 (15m), which provides an educational program
16 for one or more grades between grades 1 and 12 and which is commonly known as

1 an elementary school, middle school, junior high school, senior high school, or high
2 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.

bill

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

4 961.49 (1m) (b) 6. Any private or public school premises and any premises of
5 a tribal 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.

bill

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

7 **961.495 Possession or attempted possession of a controlled substance**
8 **on or near certain places.** If any person violates s. 961.41 (3g) by possessing or
9 attempting to possess a controlled substance included in schedule I or II, a controlled
10 substance analog of a controlled substance included in schedule I or II or ketamine
11 or flunitrazepam while in or on the premises of a scattered-site public housing
12 project, while in or on or otherwise within 1,000 feet of a state, county, city, village,
13 or town park, a jail or correctional facility, a multiunit public housing project, a
14 swimming pool open to members of the public, a youth center or a community center,
15 while in or on or otherwise within 1,000 feet of any private or public school premises
16 or of any premises of a tribal school, as defined in s. 115.001 (15m), or while in or on
17 or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court
18 shall, in addition to any other penalties that may apply to the crime, impose 100

A.F. 120

1 hours of community service work for a public agency or a nonprofit charitable
2 organization. The court shall ensure that the defendant is provided a written
3 statement of the terms of the community service order and that the community
4 service order is monitored. Any organization or agency acting in good faith to which
5 a defendant is assigned pursuant to an order under this section has immunity from
6 any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
7 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.

8 **SECTION 121. Initial applicability.**

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

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

13 (3) The treatment of sections 48.345 (12) (a) 5., 48.355 (2) (c), 938.34 (7d) (a) 5.,
14 938.342 (1r), 938.355 (2) (c), and 938.396 (2g) (m) 2. to 6. of the statutes first applies
15 to dispositional orders issued on the effective date of this subsection.

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

18

(END)

43-12

X
Section #. 118.16 (2) (e) of the statutes is amended to read:

Except as provided in para (f) ↑ shall

118.16 (2) (e) ~~shall~~ have access to information regarding the attendance of any child between the ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in attendance at a private school located in the school district.

History: 1971 c. 164 s. 85; 1975 c. 39; 1979 c. 221, 298; 1985 a. 211; 1987 a. 285; 1993 a. 16, 56, 334, 339, 491; 1995 a. 27 ss. 3947, 9130 (4), 9145 (1); 1995 a. 77; 1997 a. 3, 27, 205, 239; 1999 a. 9; 2001 a. 107; 2005 a. 122.