



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0150/2

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2009 BILL Tues 8/14

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Reynolds

1 AN ACT *to repeal* 48.01 (2), 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32

2 (1) (c) 3., 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3.,

3 48.365 (2m) (ad) 2., 48.685 (1) (e), 48.983 (1) (d), 48.983 (1) (e), 938.02 (18g),

4 938.21 (5) (d) 2., 938.21 (5) (d) 3., 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d)

5 (c) 2., 938.355 (2d) (c) 3., 938.357 (2v) (c) 2., 938.357 (2v) (c) 3., 938.365 (2m) (ad)

6 2. and 938.538 (6m) (a) 1.; *to renumber* 48.01 (1) and 938.02 (9m); *to*

7 *renumber and amend* 48.20 (8), 48.21 (5) (d) 1., 48.273 (1), 48.32 (1) (c) 1.,

8 48.355 (2d) (c) 1., 48.357 (1) (am) 2., 48.357 (2m) (c), 48.357 (2v) (c) 1., 48.365

9 (2m) (ad) 1., 48.424 (1), 48.981 (1) (cs), 938.21 (5) (d) 1., 938.273 (1) (c), 938.32

10 (1) (d) 1., 938.355 (2d) (c) 1., 938.357 (2m) (c), 938.357 (2v) (c) 1. and 938.365

11 (2m) (ad) 1.; *to amend* 48.02 (2), 48.02 (13), 48.02 (15), 48.13 (intro.), 48.14

12 (intro.), 48.15, 48.19 (2), 48.195 (2) (d) 7., 48.20 (2) (ag), 48.20 (2) (b), 48.20 (3),

13 48.20 (7) (c) (intro.), 48.20 (7) (c) 1., 48.20 (7) (d), 48.21 (3) (am), 48.21 (3) (b),

14 48.21 (3) (d), 48.21 (3) (e), 48.23 (2), 48.23 (3), 48.23 (4), 48.235 (4) (a) 7., 48.235

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1 (4m) (a) 7., 48.255 (1) (cm), 48.255 (1m) (d), 48.255 (2), 48.255 (4), 48.27 (3) (a)
2 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d), 48.30 (1), 48.30 (2), 48.30 (6) (a),
3 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315 (1m), 48.345 (3) (intro.), 48.355
4 (2) (d), 48.357 (1) (am) 1., 48.357 (1) (am) 3., 48.357 (1) (c) 2., 48.357 (1) (c) 3.,
5 48.357 (2m) (a), 48.357 (2m) (b), 48.363 (1) (a), 48.363 (1) (b), 48.365 (1m),
6 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a) 3., 48.365 (2m) (ag), 48.38 (5) (b),
7 48.38 (5) (d), 48.38 (5) (e), 48.38 (5m) (b), 48.38 (5m) (d), 48.38 (5m) (e), 48.415
8 (intro.), 48.42 (1) (d), 48.42 (2) (c), 48.42 (4) (a), 48.422 (1), 48.422 (2), 48.422 (6)
9 (a), 48.422 (8), 48.424 (2) (intro.), 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.),
10 48.424 (4) (a), 48.424 (4) (b), 48.424 (5), 48.425 (1) (intro.), 48.428 (2) (a), 48.428
11 (2) (b), 48.43 (5) (c), 48.43 (5m), 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (3m)
12 (intro.), 48.48 (8m), 48.485, 48.487 (2), 48.487 (3) (b), 48.487 (4m) (b) (intro.),
13 48.487 (4m) (c), 48.487 (4m) (d), 48.563 (3), 48.565 (intro.), 48.57 (3p) (h) 2.,
14 48.57 (3p) (h) 3. (intro.), 48.57 (3p) (h) 4., 48.57 (3t), 48.63 (1), 48.63 (3) (b) 1.,
15 48.63 (4), 48.63 (5) (b), 48.63 (5) (c), 48.63 (5) (d) 3., 48.63 (5) (d) 4., 48.63 (5) (d)
16 5., 48.63 (5) (d) 6., 48.645 (1) (a), 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645 (2) (a)
17 4., 48.645 (2) (b), 48.685 (5) (a), 48.685 (5d) (a) (intro.), 48.685 (5d) (a) 2., 48.685
18 (5d) (a) 3., 48.685 (5d) (a) 3m., 48.685 (5d) (a) 4., 48.685 (5d) (b), 48.825 (1) (b),
19 48.83 (1), 48.831 (2), 48.837 (1r) (a), 48.837 (4) (c), 48.837 (4) (d), 48.837 (6) (c),
20 48.85 (1), 48.88 (2) (a) (intro.), 48.88 (2) (b), 48.89 (1), 48.91 (3), 48.93 (1d),
21 48.977 (4) (a) 1., 48.977 (4) (b) 6., 48.977 (4) (c) 2., 48.978 (2) (b) 11., 48.981 (1)
22 (ct), 48.981 (1) (i), 48.981 (3) (bm) (intro.), 48.981 (3) (bm) 1., 48.981 (3) (bm) 2.,
23 48.981 (7) (a) 10m., 48.981 (7) (a) 10r., 48.981 (7) (a) 11m., 938.02 (10m), 938.02
24 (12m), 938.02 (13), 938.02 (15), 938.02 (15c), 938.13 (intro.), 938.15, 938.185 (4)
25 (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185 (4) (b), 938.19 (2), 938.20 (2)

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1 (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1., 938.20 (7) (d), 938.20 (8) (a),
2 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag), 938.21 (3) (am), 938.21 (3) (b),
3 938.21 (3) (d), 938.21 (3) (e), 938.23 (3), 938.23 (4), 938.235 (4) (a) 7., 938.24 (2r)
4 (title), 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r) (a) 2., 938.24 (2r) (b),
5 938.243 (1) (e), 938.25 (2g) (title), 938.255 (1) (cm), 938.255 (1) (cr) 1. a., 938.255
6 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255 (2), 938.255 (4),
7 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b), 938.299 (6) (d),
8 938.299 (9) (title), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30 (6) (a), 938.30
9 (7), 938.305, 938.31 (7) (a), 938.355 (2) (d), 938.355 (6) (an) 1., 938.355 (6) (b),
10 938.355 (6m) (am) 1., 938.355 (6m) (c), 938.357 (1) (am) 1., 938.357 (1) (am) 2.,
11 938.357 (1) (am) 3., 938.357 (1) (c) 2., 938.357 (1) (c) 3., 938.357 (2m) (a), 938.357
12 (2m) (b), 938.363 (1) (a), 938.363 (1) (b), 938.365 (1m), 938.365 (2), 938.365 (2m)
13 (a) 1., 938.365 (2m) (a) 3., 938.365 (2m) (ag), 938.38 (3) (intro.), 938.38 (5) (b),
14 938.38 (5) (d), 938.38 (5) (e), 938.38 (5m) (b), 938.38 (5m) (d), 938.38 (5m) (e) and
15 938.538 (6m) (a) 4.; **to repeal and recreate** 48.028 and 938.028; and **to create**
16 48.02 (8d), 48.02 (8m), 48.02 (8p), 48.02 (8r), 48.02 (18j), 48.14 (12), 48.207 (1g),
17 48.23 (2g), 48.255 (1) (g), 48.255 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299
18 (9), 48.315 (1) (j), 48.32 (1) (d), 48.33 (4) (d), 48.335 (3j), 48.345 (3m), 48.355 (2)
19 (b) 6v., 48.355 (2d) (d), 48.357 (1) (am) 1g., 48.357 (1) (c) 1m., 48.357 (1) (c) 2m.,
20 48.357 (2m) (am), 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b) 4., 48.38
21 (4) (i), 48.38 (4m), 48.38 (5) (c) 8., 48.41 (2) (e), 48.417 (2) (cm), 48.42 (1) (e), 48.42
22 (2g) (ag), 48.424 (1) (b), 48.425 (1) (cm), 48.427 (5), 48.427 (6) (b) 4., 48.43 (5)
23 (bm), 48.831 (1r), 48.831 (4) (cm), 48.833 (3), 48.837 (2) (e), 48.88 (2) (ag), 48.93
24 (1v), 48.977 (4) (c) 1. j., 48.977 (4) (c) 2m., 48.977 (4) (g) 4., 806.245 (1m), 938.02
25 (8d), 938.02 (8g), 938.02 (8m), 938.02 (8p), 938.02 (8r), 938.02 (18j), 938.207

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1 (1g), 938.23 (2g), 938.255 (1) (g), 938.27 (3) (d), 938.273 (1) (ag), 938.273 (1) (c)
2 2., 938.299 (10), 938.315 (1) (a) 11., 938.32 (1) (e), 938.33 (4) (d), 938.335 (3j),
3 938.345 (1m), 938.355 (2) (b) 6v., 938.355 (2d) (d), 938.355 (6) (bm), 938.355 (6)
4 (cr), 938.355 (6m) (bm), 938.355 (6m) (cr), 938.357 (1) (am) 1g., 938.357 (1) (c)
5 1m., 938.357 (1) (c) 2m., 938.357 (2m) (am), 938.357 (2m) (bm), 938.357 (2v) (a)
6 4., 938.365 (2g) (b) 4., 938.38 (4) (i), 938.38 (4m) and 938.38 (5) (c) 8. of the
7 statutes; **relating to:** Indian child welfare.

Analysis by the Legislative Reference Bureau***Introduction***

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

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

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

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

4. An adoptive placement.

The bill. This bill incorporates the jurisdictional provisions of ICWA and the minimum standards for Indian child custody proceedings established by ICWA into the provisions of the Children's Code relating to child in need of protection or services (CHIPS), TPR, and adoption proceedings and the provisions of the Juvenile Justice Code relating to juvenile in need of protection or services (JIPS) proceedings, other than proceedings that are based on the commission of an act that would be a crime if committed by an adult and other than an emergency removal of an Indian child from the home of his or her parent or Indian custodian to prevent imminent physical harm to the child.

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

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

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

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

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

2. Prohibits a court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) from determining whether those provisions apply to an Indian child custody proceeding based on whether the Indian child is part of an existing Indian family. (1)

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

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by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence. The juvenile court may not consider any perceived inadequacy of the tribal social services department or the tribal court of the Indian child's tribe in determining whether good cause exists to deny the transfer.

Out-of-home care placements and TPR proceedings

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

This bill requires the party seeking an out-of-home care placement of an Indian child in a CHIPS or JIPS proceeding or seeking an involuntary TPR to an Indian child to notify by registered mail, return receipt requested, the Indian child's parent, Indian custodian, and tribe of the first hearing of the proceeding and file the return receipt with the court. The bill requires similar notice to those persons of a change-in-placement proceeding that would remove the Indian child from the home of his or her parent or Indian custodian. For subsequent hearings in a proceeding, notice may be provided by mail, personal delivery, or facsimile transmission, but not by electronic mail. The bill prohibits an initial CHIPS, JIPS, or TPR hearing or a change in placement hearing removing an Indian child from the home of his or her parent or Indian custodian from being held until at least ten days after receipt of notice of the hearing by the parent, Indian custodian, or tribe or until at least ten days after receipt of notice of the hearing by the U.S. secretary of the interior and permits a parent, Indian custodian, or tribe to request up to 20 additional days to prepare for the hearing.

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

Active efforts and serious damage findings. ICWA requires a party seeking to effect an out-of-home care placement of, or an involuntary TPR to, an Indian child to satisfy the state court that active efforts have been made to provide remedial

3) the Indian child's tribe has received notice of the proceeding. The tribe has not indicated that the tribe is monitoring the proceeding and may request a transfer at a later date, and because of gross negligence the tribe has not petitioned for a transfer within three months after receiving notice of the proceeding.

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

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

Qualified expert witness. The bill defines a "qualified expert witness" as a person who is a member of the Indian child's tribe knowledgeable in the tribe's customs relating to family organization or child-rearing practices, a member of another tribe who is knowledgeable in those customs, a professional person having substantial knowledge of those customs, or a layperson having substantial knowledge of those customs and requires a qualified expert witness to be chosen in that order of preference. The bill also specifies that the evidence of active efforts to prevent the breakup of the Indian family must show that there has been an ongoing, vigorous, and concerted level of case work beyond the level that typically constitutes reasonable efforts to prevent the removal of the child from the home and requires the active efforts to be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe and to utilize the available resources of the Indian child's tribe, tribal and other Indian child welfare agencies, extended family members, other individual Indian caregivers, and other culturally appropriate service providers.

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unless the party calling the qualified expert witness shows that it has made a diligent effort to secure a qualified expert witness from a higher order of preference

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

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

1. The home of an extended family member of the Indian child.
2. A foster home or treatment foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home or treatment foster home licensed or approved by the Department of Children and Families (DCF), a county department of human services or social services (county department), or a child welfare agency.
4. A group home or residential care center for children and youth approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the needs of the Indian child.

The bill requires the juvenile court to designate a placement that is the least restrictive setting that most approximates a family, that meets the Indian child's special needs, if any, and that is within reasonable proximity to the Indian child's home, taking into account the Indian child's special needs. The bill also specifies that the standards to be applied in meeting the placement preference requirements of the bill are the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family members reside or with which the parent or extended family members maintain social and cultural ties.

In addition, the bill requires a determination as to whether there is good cause to depart from the order of placement preference requirements of the bill to be based on: 1) the request of a parent or, if the Indian child is of sufficient age and

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developmental level to make an informed decision, the Indian child, unless the request is made for the purpose of avoiding the application of the bill and ICWA; 2) any extraordinary physical, mental, or emotional health needs of the Indian child requiring highly specialized treatment services as established by the testimony of an expert witness, including a qualified expert witness; and 3) the unavailability of a suitable placement after diligent efforts have been made to place the child in accordance with those order of placement preference requirements.

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

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

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

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

Consent. This bill provides that a voluntary consent to an out-of-home care or placement of, or TPR to, an Indian child is valid only if the consent is executed in writing, recorded before a judge, and accompanied by a written certification by the judge that the terms and consequences of the consent were fully explained in detail to and were fully understood by the parent. The bill also requires the judge to certify that the parent fully understood the explanation in English or that the explanation

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was interpreted into a language that the parent understood. Under the bill, any consent to an out-of-home care placement or TPR given prior to or within ten days after the birth of an Indian child is not valid.

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

Adoption

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

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

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

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

In addition, the bill requires a determination as to whether there is good cause to depart from the order of placement preference requirements of the bill to be based on: 1) the request of a parent or, if the Indian child is of sufficient age and developmental level to make an informed decision, the Indian child, unless the

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request is made for the purpose of avoiding the application of the bill and ICWA; 2) any extraordinary physical, mental, or emotional health needs of the Indian child requiring highly specialized treatment services as established by a qualified expert witness; and 3) the unavailability of a suitable placement after active efforts have been made to place the child in accordance with those order of placement preference requirements.

Return of custody. ICWA permits a biological parent or former Indian custodian of an Indian child who has been adopted to petition for return of custody of the Indian child when a final decree of adoption of the Indian child has been vacated or set aside or when the adoptive parents of the Indian child voluntarily consent to TPR to the Indian child. Under ICWA, the state court must grant the petition unless there is a showing that return of custody is not in the best interests of the Indian child. This bill permits the former parent or former Indian custodian of an Indian child who has been adopted to petition for the return of custody of the Indian child when a final order granting adoption of the Indian child is vacated or set aside or the parental rights of all adoptive parents of the Indian child are voluntarily terminated. The juvenile court must grant the petition unless there is a showing of good cause that return of custody is not in the best interest of the Indian child.

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

This bill requires a juvenile court that enters an order granting adoption of an Indian child to: 1) provide the U.S. secretary of the interior with a copy of the order, together with such other records and papers pertaining to the adoption proceeding as may be necessary to provide that secretary with the name and tribal affiliation of the Indian child, the names and addresses of the Indian child's birth parents, the names and addresses of the Indian child's adoptive parents, and the identity of any agency that has in its possession any files or information relating to the adoptive placement of the Indian child; 2) give the birth parent an opportunity to file an affidavit indicating that the birth parent wishes the U.S. secretary of the interior to maintain the confidentiality of the birth parent's identity and include that affidavit with the information provided to the U.S. secretary of the interior; and 3) provide or arrange to provide an Indian adoptee who is 18 years of age or older, upon request,

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with the tribal affiliation, if any, of the adoptee's birth parents and with such other information as may be necessary to protect any rights accruing to the adoptee as a result of that affiliation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

Insert
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Please
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bill

As affected by 2009 Wisconsin Act 28,

~~SECTION 1. 48.01 (1) of the statutes is renumbered 48.01 (e).~~

~~SECTION 2. 48.01 (2) of the statutes is repealed.~~

SECTION 3. 48.02 (2) of the statutes is amended to read:

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

SECTION 4. 48.02 (8d) of the statutes is created to read:

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

SECTION 5. 48.02 (8m) of the statutes is created to read:

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

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

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

and 48.01 (1g) and (1m) as renumbered, are amended to read:

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

2 48.02 **(8p)** "Indian custodian" means an Indian person who has legal custody
3 of an Indian child under tribal law or custom or under state law or to whom
4 temporary physical care, custody, and control has been transferred by the parent of
5 the child.

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

7 48.02 **(8r)** "Indian tribe" means any Indian tribe, band, nation, or other
8 organized group or community of Indians that is recognized as eligible for the
9 services provided to Indians by the U.S. secretary of the interior because of Indian
10 status, including any Alaska native village, as defined in 43 USC 1602 (c).

11 **SECTION 8.** 48.02 (13) of the statutes is amended to read:

12 48.02 **(13)** "Parent" means either a biological parent, a husband who has
13 consented to the artificial insemination of his wife under s. 891.40, or a parent by
14 adoption. If the child is a nonmarital child who is not adopted or whose parents do
15 not subsequently intermarry under s. 767.803, "parent" includes a person
16 acknowledged under s. 767.805 or a substantially similar law of another state or
17 adjudicated to be the biological father. "Parent" does not include any person whose
18 parental rights have been terminated. For purposes of the application of s. 48.028
19 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, "parent" means a
20 biological parent, an Indian husband who has consented to the artificial
21 insemination of his wife under s. 891.40, or an Indian person who has lawfully
22 adopted an Indian child, including an adoption under tribal law or custom, and
23 includes, in the case of a nonmarital child who is not adopted or whose parents do
24 not subsequently intermarry under s. 767.803, a person acknowledged under s.
25 767.805 or a substantially similar law of another state or adjudicated to be the

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1 biological father, but does not include any person whose parental rights have been
2 terminated.

3 **SECTION 9.** 48.02 (15) of the statutes is amended to read:

4 48.02 (15) "Relative" means a parent, stepparent, brother, sister, stepbrother,
5 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
6 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
7 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
8 marriage, or legal adoption, or the spouse of any person named in this subsection,
9 even if the marriage is terminated by death or divorce. For purposes of the
10 application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to
11 1963, "relative" includes an extended family member, as defined in s. 48.028 (2) (am),
12 whether by blood, marriage, or adoption, including adoption under tribal law or
13 custom.

14 **SECTION 10.** 48.02 (18j) of the statutes is created to read:

15 48.02 (18j) "Tribal court" means a court that has jurisdiction over Indian child
16 custody proceedings, and that is either a court of Indian offenses or a court
17 established and operated under the code or custom of an Indian tribe, or any other
18 administrative body of an Indian tribe that is vested with authority over Indian child
19 custody proceedings.

20 **SECTION 11.** 48.028 of the statutes is repealed and recreated to read:

21 **48.028 Indian child welfare. (1) DECLARATION OF POLICY.** In Indian child
22 custody proceedings, the best interests of the Indian child shall be determined in
23 accordance with ~~the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the~~
24 ~~policy specified in par. (b). It is the policy of this state to do all of the following:~~

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

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

5 1. Establishing minimum standards for the removal of Indian children from
6 their families and placing those children in out-of-home care placements,
7 preadoptive placements, or adoptive placements that will reflect the unique value of
8 Indian culture.

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

54801 (2)

17 (2) DEFINITIONS. In this section:

18 (a) "Adoptive placement" means the permanent placement of an Indian child
19 for adoption.

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

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1 (b) "Former Indian custodian" means a person who was the Indian custodian
2 of an Indian child before termination of parental rights to and adoption of the Indian
3 child.

4 (c) "Former parent" means a person who was the parent of an Indian child
5 before termination of parental rights to and adoption of the Indian child.

6 (d) "Indian child custody proceeding" means a proceeding governed by the
7 federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following
8 may occur:

9 1. An adoptive placement.

10 2. An out-of-home care placement.

11 3. A preadoptive placement.

12 4. A termination of parental rights, as defined in s. 48.40 (2) to an Indian child.

13 (e) "Out-of-home care placement" means the removal of an Indian child from
14 the home of his or her parent or Indian custodian for temporary placement in a foster
15 home, treatment foster home, group home, residential care center for children and
16 youth, or shelter care facility, in the home of a relative other than a parent, or in the
17 home of a guardian, from which placement the parent or Indian custodian cannot
18 have the child returned upon demand. "Out-of-home care placement" does not
19 include an adoptive placement, a preadoptive placement, or holding an Indian child
20 in custody under ss. 48.19 to 48.21.

21 (f) "Preadoptive placement" means the temporary placement of an Indian child
22 in a foster home, treatment foster home, group home, or residential care center for
23 children and youth, in the home of a relative other than a parent, or in the home of
24 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
25 placement.

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1 (g) "Qualified expert witness" means a person who is any of the following:

2 1. A member of the Indian child's tribe recognized by the Indian child's tribal
3 community as knowledgeable regarding the tribe's customs relating to family
4 organization or child-rearing practices.

5 2. A member of another tribe who is knowledgeable regarding the customs of
6 the Indian child's tribe relating to family organization or child-rearing practices.

7 3. A professional person having substantial education and experience in the
8 person's professional specialty and having substantial knowledge of the customs,
9 traditions, and values of the Indian child's tribe relating to family organization and
10 child-rearing practices.

11 4. A layperson having substantial experience in the delivery of child and family
12 services to Indians and substantial knowledge of the prevailing social and cultural
13 standards and child-rearing practices of the Indian child's tribe.

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

18 **(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS.** (a) *Applicability.*
19 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
20 to any Indian child custody proceeding regardless of whether the Indian child is in
21 the legal custody or physical custody of an Indian parent, Indian custodian, extended
22 family member, or other person at the commencement of the proceeding and whether
23 the Indian child resides or is domiciled on or off of a reservation. A court assigned
24 to exercise jurisdiction under this chapter may not determine whether this section
25 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian

BILL**SECTION 11**

1 child custody proceeding based on whether the Indian child is part of an existing
2 Indian family.

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

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

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

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any of the following applies: (P) a 0 The

- 1 1. A parent of the Indian child objects to the transfer.
- 2 2. The Indian child's tribe does not have a tribal court, or the tribal court of the
- 3 Indian child's tribe declines jurisdiction.
- 4 3. The court determines that good cause exists to deny the transfer. The court
- 5 may determine that good cause exists to deny the transfer only if the person opposing
- 6 the transfer shows by clear and convincing evidence that ~~the~~ Indian child is 12 years
- 7 of age or over and objects to the transfer ~~or that the~~ evidence or testimony necessary
- 8 to decide the case cannot be presented in tribal court without undue hardship to the
- 9 parties or the witnesses and that the tribal court is unable to mitigate the hardship
- 10 by making arrangements to receive the evidence or testimony by use of telephone or
- 11 live audiovisual means, by hearing the evidence or testimony at a location that is
- 12 convenient to the parties and witnesses, or by use of other means permissible under
- 13 the tribal court's rules of evidence. In determining whether good cause exists to deny
- 14 the transfer, the court may not consider any perceived inadequacy of the tribal social
- 15 services department or the tribal court of the Indian child's tribe.

Note

16 (d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction

17 under this chapter determines that the petitioner in an Indian child custody

18 proceeding has improperly removed the Indian child from the custody of his or her

19 parent or Indian custodian or has improperly retained custody of the Indian child

20 after a visit or other temporary relinquishment of custody, the court shall decline

21 jurisdiction over the petition and immediately return the Indian child to the custody

22 of the parent or Indian custodian, unless the court determines that returning the

23 Indian child to his or her parent or Indian custodian would subject the Indian child

24 to substantial and immediate danger or the threat of that danger.

(P) a 0 The Indian child's tribe received notice of the proceeding under sub (4)(a) the tribe has not indicated to the court in writing that the tribe is monitoring the proceeding and may request a transfer at a later date and because of gross negligence the tribe has not petitioned for a transfer within 3 months after receiving notice of the proceeding

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1 (e) *Intervention.* An Indian child's Indian custodian or tribe may intervene at
2 any point in an Indian child custody proceeding under this chapter involving an
3 out-of-home care placement of, or termination of parental rights to, the Indian child.

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

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

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1 (b) *Appointment of counsel.* Whenever an Indian child is the subject of a
2 proceeding involving the removal of the Indian child from the home of his or her
3 parent or Indian custodian, placement of the Indian child in an out-of-home care
4 placement, or termination of parental rights to the Indian child, the Indian child's
5 parent or Indian custodian shall have the right to be represented by court-appointed
6 counsel as provided in s. 48.23 (2g). The court may also, in its discretion, appoint
7 counsel for the Indian child under s. 48.23 (1m) or (3) if the court finds that the
8 appointment is in the best interests of the Indian child.

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

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

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

23 2. The court or jury finds by clear and convincing evidence that active efforts,
24 as described in par. (g) 1., have been made to provide remedial services and
25 rehabilitation programs designed to prevent the breakup of the Indian family and

BILL

SECTION 11

1 that those efforts have proved unsuccessful. The court or jury shall make that
2 finding notwithstanding that a circumstance specified in s. 48.355 (2d) (b) 1. to 5.
3 applies.

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

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

11 2. The court or jury finds by clear and convincing evidence that active efforts,
12 as described in par. (g) 1., have been made to provide remedial services and
13 rehabilitation programs designed to prevent the breakup of the Indian family and
14 that those efforts have proved unsuccessful.

15 (f) *Qualified expert witness; order of preference.* 1. A qualified expert witness
16 shall be chosen in the following order of preference:

- 17 a. A member of the Indian child's tribe described in sub. (2) (g) 1.
- 18 b. A member of another tribe described in sub. (2) (g) 2.
- 19 c. A professional person described in sub. (2) (g) 3.
- 20 d. A layperson described in sub. (2) (g) 4.

21 2. A qualified expert witness from a lower order of preference may be chosen
22 only if the party calling the qualified expert witness shows by clear and convincing
23 evidence that it has made a diligent effort to secure the attendance of a qualified
24 expert witness from a higher order of preference. A qualified expert witness from a
25 lower order of preference may not be chosen solely because a qualified expert witness

Not

Any party to a proceeding involving the
sub-home placement of or involuntary
termination of parental rights to an Indian
child may
call a qualified
expert witness
= Subject to sub. (g) 1.

child

child may

call a qualified expert witness

= Subject to sub. (g) 1.

BILL ~~or order an involuntary termination of parental rights to an Indian child~~

(Not)

removed from the home or the Indian custodian and Indian custodian's parent or

The fact that a qualified expert witness called by one party is from a lower order of preference under s. 807.13 (2) than a qualified expert witness called by another party may not be the sole consideration in weighing the testimony and opinions of the qualified expert witnesses. The court shall determine the qualifications of a qualified expert witness as provided in ch. 48.107.

1 from a higher order of preference is able to participate in the Indian child custody
2 proceeding only by telephone or live audiovisual means as prescribed in s. 807.13 (2)

3 (g) *Active efforts standard.* 1. The court may not order an Indian child to be
4 placed in an out-of-home care placement unless the evidence of active efforts under
5 or (e) 2.

6 work beyond the level that typically constitutes reasonable efforts, as described in
7 s. 48.355 (2c). The court may not order an involuntary termination of parental rights
8 to an Indian child unless the evidence of active efforts under par. (e) 2. shows that
9 there has been an ongoing, vigorous, and concerted level of case work beyond the
10 level that typically constitutes reasonable efforts, as described in s. 48.415 (2) (a) 2.

11 and that the active efforts were made in a manner that takes into account the prevailing
12 social and cultural values, conditions, and way of life of the Indian child's tribe and
13 that utilizes the available resources of the Indian child's tribe, tribal and other
14 Indian child welfare agencies, extended family members of the Indian child, other
15 individual Indian caregivers, and other culturally appropriate service providers.
16 The consideration by the court or jury of whether active efforts were made under par.
17 (d) 2. or (e) 2. shall include whether all of the following activities were conducted:

18 a. Representatives designated by the Indian child's tribe with substantial
19 knowledge of the prevailing social and cultural standards and child-rearing practice
20 within the tribal community were requested to evaluate the ~~Indian child's~~
21 ~~circumstances~~ and to assist in developing a case plan that uses the resources of the
22 tribe and of the Indian community, including traditional and customary support,
23 actions, and services, to address ~~the Indian child's~~ ^{those} circumstances. ^{the likelihood of protecting}

24 b. Representatives of the Indian child's tribe were identified, notified, and
25 invited to participate in all aspects of the Indian child custody proceeding at the

A comprehensive assessment of the ^{situation} ~~circumstances~~ of the Indian child's family was completed, including a determination of ~~the~~ the Indian child's health, safety, and welfare ~~and~~ effectively ~~placed~~ in the Indian child's home.

BILL ^{Not} including extended family members who were identified by the Indian child's tribe ~~or~~ parents ^{or}

1 earliest possible point in the proceeding and their advice was actively solicited
 2 throughout the proceeding.

3 c. Extended family members of the Indian child were notified and consulted
 4 with to identify and provide family structure and support for the Indian child, to
 5 assure cultural connections, and to serve as placement resources for the Indian child.

6 d. Arrangements were made to provide natural and unsupervised family
 7 interaction in the most natural setting that can ensure the Indian child's safety, as
 8 appropriate to the goals of the Indian child's permanency plan, including
 9 arrangements for transportation and other assistance to enable family members to
 10 participate in that interaction.

and in-home support services, in-home intensive treatment services, community support services, and specialized services for members of the Indian child's family with special needs

11 e. All available family preservation strategies were offered or employed and the
 12 involvement of the Indian child's tribe was requested to ensure that those strategies
 13 are culturally appropriate to the Indian child's tribe.

14 f. Community resources offering housing, financial, and transportation
 15 assistance were identified, information about those resources was provided to the
 16 Indian family, and the Indian family was actively assisted or offered active
 17 assistance in accessing those resources.

18 2. If any of the activities specified in subd. 1. a. to ^h were not conducted, the
 19 person seeking the out-of-home care placement or involuntary termination of
 20 parental rights shall submit documentation to the court explaining why the activity
 21 was not ~~conducted~~ ^{conducted}

22 (5) VOLUNTARY PROCEEDINGS; CONSENT; WITHDRAWAL. (a) *Out-of-home care*
 23 *placement*. A voluntary consent by a parent or Indian custodian to an out-of-home
 24 care placement of an Indian child under s. 48.63 (1) or (5) (b) is not valid unless the
 25 consent is executed in writing, recorded before a judge, and accompanied by a written

So Monitoring of client progress and client participation in services was provided to consideration of alternative ways of addressing the needs of the Indian child's family was provided if services did not exist or if existing services were not available to the family

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

12 (b) *Termination of parental rights.* A voluntary consent by a parent to a
13 termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent
14 is executed in writing, recorded before a judge, and accompanied by a written
15 certification by the judge that the terms and consequences of the consent were fully
16 explained in detail to and were fully understood by the parent. The judge shall also
17 certify that the parent fully understood the explanation in English or that the
18 explanation was interpreted into a language that the parent understood. Any
19 consent given under this paragraph prior to or within 10 days after the birth of the
20 Indian child is not valid. A parent who has executed a consent under this paragraph
21 may withdraw the consent for any reason at any time prior to the entry of a final
22 order terminating parental rights, and the Indian child shall be returned to his or
23 her parent unless an order or agreement specified in s. 48.368 (1) or 938.368 (1)
24 provides otherwise. After the entry of a final order terminating parental rights, a
25 parent who has executed a consent under this paragraph may withdraw that consent

for a different placement

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unless ~~by~~ an order or agreement specified in
s. 48.0368 (1) or 938.0368 (1) that was in effect
prior to the termination of parental rights provides for a different

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1 as provided in par. (c), move to invalidate the termination of parental rights under placement
2 sub. (6), or move for relief from the judgment under s. 48.46 (2).

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

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

23 (7) PLACEMENT OF INDIAN CHILD. (a) *Adoptive placement; preferences.* Subject
24 to pars. (c) and (d), in placing an Indian child for adoption, preference shall be given,

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

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

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

- 15 1. The home of an extended family member of the Indian child.
- 16 2. A foster home or treatment foster home licensed, approved, or specified by
17 the Indian child's tribe.
- 18 3. An Indian foster home or treatment foster home licensed or approved by the
19 department, a county department, or a child welfare agency.
- 20 4. A group home or residential care center for children and youth approved by
21 an Indian tribe or operated by an Indian organization that has a program suitable
22 to meet the needs of the Indian child.

23 (bm) *Temporary physical custody; preferences.* Any Indian child who is being
24 held in temporary physical custody under s. 48.205 (1) shall be placed in compliance
25 with par. (b) or, if applicable, par. (c), unless the person responsible for determining

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1 the placement finds good cause, as described in par. (e), for departing from the order
2 of placement preference under par. (b) or finds that emergency conditions necessitate
3 departing from that order. When the reason for departing from that order is resolved,
4 the Indian child shall be placed in compliance with the order of placement preference
5 under par. (b) or, if applicable, par. (c).

6 (c) *Tribal or personal preferences.* In placing an Indian child under par. (a), (b),
7 or (bm), if the Indian child's tribe has established, by resolution, an order of
8 preference that is different from the order specified in par. (a) or (b), the order of
9 preference established by that tribe shall be followed, in the absence of good cause,
10 as described in par. (e), to the contrary, so long as the placement under par. (a) is
11 appropriate for the Indian child's special needs, if any, and the placement under par.
12 (b) or (bm) is the least restrictive setting appropriate for the Indian child's needs as
13 specified in par. (b). When appropriate, the preference of the Indian child or parent
14 shall be considered, and, when a parent who has consented to the placement
15 evidences a desire for anonymity, that desire shall be given weight, in determining
16 the placement.

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

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

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1 a. When appropriate, the request of the Indian child's parent or, if the Indian
2 child is of sufficient age and developmental level to make an informed decision, the
3 Indian child, unless the request is made for the purpose of avoiding the application
4 of this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963.

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

10 c. The unavailability of a suitable placement for the Indian child after diligent
11 efforts have been made to place the Indian child in the order of preference under par.
12 (a), (b), or (c).

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

15 (f) *Report of placement.* The department, a county department, or a child
16 welfare agency shall maintain a record of each adoptive placement, out-of-home
17 care placement, and preadoptive placement made of an Indian child, evidencing the
18 efforts made to comply with the placement preference requirements specified in this
19 subsection, and shall make that record available at any time on the request of the
20 U.S. secretary of the interior or the Indian child's tribe.

21 **(8) RETURN OF CUSTODY.** (a) *Adoption vacated, set aside, or terminated.* If a final
22 order granting adoption of an Indian child is vacated or set aside or if the parental
23 rights to an Indian child of all adoptive parents of the Indian child are voluntarily
24 terminated, the Indian child's former parent or former Indian custodian may petition
25 for the return of custody of the Indian child. On receipt of a return of custody petition,

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1 the court shall set a date for a hearing on the petition that allows reasonable time
2 for the parties to prepare. The court shall provide notice of the hearing to the
3 guardian and legal custodian of the Indian child, to all other interested parties as
4 provided in s. 48.27 (6), and to the Indian child's former parent and former Indian
5 custodian. At the conclusion of the hearing, the court shall grant a petition for the
6 return of custody of the Indian child to the Indian child's former parent or former
7 Indian custodian unless there is a showing that return of custody is not in the best
8 interests of the Indian child.

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

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

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

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1 (b) *Confidentiality of parent's identity.* The court shall give the birth parent of
 2 an Indian child the opportunity to file an affidavit indicating that the birth parent
 3 wishes the U.S. secretary of the interior to maintain the confidentiality of the birth
 4 parent's identity. If the birth parent files that affidavit, the court shall include the
 5 affidavit with the information provided to the U.S. secretary of the interior under
 6 par. (a), and that secretary shall maintain the confidentiality of the birth parent's
 7 identity as required under 25 USC 1951 (a) and (b).

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

13 **(10) HIGHER STATE OR FEDERAL STANDARD APPLICABLE.** The federal Indian Child
 14 Welfare Act, 25 USC 1901 to 1963, supersedes this chapter in any Indian child
 15 custody proceeding governed by that act, except that in any case in which this
 16 chapter provides a higher standard of protection for the rights of an Indian child's
 17 parent or Indian custodian than the rights provided under that act, the court shall
 18 apply the standard under this chapter.

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19 **SECTION 12.** 48.13 (intro.) of the statutes is amended to read:

20 **48.13 Jurisdiction over children alleged to be in need of protection or**
 21 **services.** (intro.) The Except as provided in s. 48.028 (3), the court has exclusive
 22 original jurisdiction over a child alleged to be in need of protection or services which
 23 can be ordered by the court, and:

24 **SECTION 13.** 48.14 (intro.) of the statutes is amended to read:

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

3 **SECTION 14.** 48.14 (12) of the statutes is created to read:

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

10 **SECTION 15.** 48.15 of the statutes is amended to read:

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

22 **SECTION 16.** 48.19 (2) of the statutes is amended to read:

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

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

9 **SECTION 17.** 48.195 (2) (d) 7. of the statutes is amended to read:

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

15 **SECTION 18.** 48.20 (2) (ag) of the statutes is amended to read:

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

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

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

24 **SECTION 20.** 48.20 (3) of the statutes is amended to read:

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

13 **SECTION 21.** 48.20 (7) (c) (intro.) of the statutes is amended to read:

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

15 **SECTION 22.** 48.20 (7) (c) 1. of the statutes is amended to read:

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

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

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

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

3 **SECTION 24.** 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended
4 to read:

5 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
6 child's parent, guardian ~~and~~, legal custodian, and Indian custodian of the reasons for
7 holding the child in custody and of the child's whereabouts unless there is reason to
8 believe that notice would present imminent danger to the child. The parent,
9 guardian ~~and~~, legal custodian, and Indian custodian shall also be notified of the time
10 and place of the detention hearing required under s. 48.21, the nature and possible
11 consequences of that hearing, ~~and~~ the right to present and cross-examine witnesses
12 at the hearing, and, in the case of a parent or Indian custodian of an Indian child who
13 is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2.,
14 the right to counsel under s. 48.028 (4) (b). If the parent, guardian ~~or~~, legal custodian,
15 or Indian custodian is not immediately available, the intake worker or another
16 person designated by the court shall provide notice as soon as possible. When the
17 child is 12 years of age or older, the child shall receive the same notice about the
18 detention hearing as the parent, guardian ~~or~~, legal custodian, or Indian custodian.
19 The intake worker shall notify both the child and the child's parent, guardian ~~or~~,
20 legal custodian. ~~When, or Indian custodian.~~

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

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1 ~~or~~, legal custodian, or Indian custodian. The intake worker shall notify the child
2 expectant mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian and
3 the unborn child, by the unborn child's guardian ad litem.

4 **SECTION 25.** 48.207 (1g) of the statutes is created to read:

5 48.207 (1g) An Indian child held in physical custody under s. 48.205 (1) shall
6 be placed in compliance with s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless
7 the person responsible for determining the placement finds good cause, as described
8 in s. 48.028 (7) (e), for departing from the order of placement preference under s.
9 48.028 (7) (b) or finds that emergency conditions necessitate departing from that
10 order. When the reason for departing from that order is resolved, the Indian child
11 shall be placed in compliance with the order of placement preference under s. 48.028
12 (7) (b) or, if applicable, s. 48.028 (7) (c).

13 **SECTION 26.** 48.21 (3) (am) of the statutes is amended to read:

14 48.21 (3) (am) The parent, guardian, ~~or~~ legal custodian, or Indian custodian
15 may waive his or her right to participate in the hearing under this section. After any
16 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
17 custodian, Indian custodian, or any other interested party for good cause shown.

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

19 48.21 (3) (b) If present at the hearing, a copy of the petition or request shall be
20 given to the parent, guardian ~~or~~, legal custodian, or Indian custodian, and to the child
21 if he or she is 12 years of age or older, before the hearing begins. If the child is an
22 expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8.,
23 a copy of the petition shall also be given to the unborn child, through the unborn
24 child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall
25 be given to the child's parent, guardian ~~and~~, legal custodian, and Indian custodian,

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1 to the child if he or she is 12 years of age or older and, if the child is an expectant
2 mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn
3 child, through the unborn child's guardian ad litem, ~~in accordance with~~ under s.
4 48.20 (8).

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

6 48.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
7 the parent, guardian ~~or~~, legal custodian ~~shall be informed by the court, or Indian~~
8 custodian of the allegations that have been made or may be made, the nature and
9 possible consequences of this hearing as compared to possible future hearings, the
10 right to present, confront, and cross-examine ~~witnesses and the right to present~~
11 witnesses, and, in the case of a parent or Indian custodian of an Indian child who is
12 the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right
13 to counsel under s. 48.028 (4) (b).

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

15 48.21 (3) (e) If the parent, guardian ~~or~~, legal custodian, Indian custodian, or ~~the~~
16 child is not represented by counsel at the hearing and the child is continued in
17 custody as a result of the hearing, the parent, guardian, legal custodian, Indian
18 custodian, or child may request through counsel subsequently appointed or retained
19 or through a guardian ad litem that the order to hold the child in custody be reheard.
20 If the request is made, a rehearing shall take place as soon as possible. ~~Any~~ An order
21 to hold the child in custody shall be ~~subject to rehearing~~ reheard for good cause,
22 whether or not counsel was present.

23 **SECTION 30.** 48.21 (5) (d) 1. of the statutes is renumbered 48.21 (5) (d) and
24 amended to read:

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

§ as affected by 2009 Wisconsin Act 28,

8 **SECTION 31.** 48.21 (5) (d) 2. of the statutes ^{is} repealed.

9 **SECTION 32.** 48.21 (5) (d) 3. of the statutes ^{is} repealed.

10 **SECTION 33.** 48.23 (2) of the statutes is amended to read:

11 48.23 (2) Whenever a child is the subject of a proceeding involving a contested
 12 adoption or the involuntary termination of parental rights, any parent under 18
 13 years of age who appears before the court shall be represented by counsel; but no such
 14 parent may waive counsel. ~~-A- Except as provided in sub. (2g), a~~ minor parent
 15 petitioning for the voluntary termination of parental rights shall be represented by
 16 a guardian ad litem. If a proceeding involves a contested adoption or the involuntary
 17 termination of parental rights, any parent 18 years old or older who appears before
 18 the court shall be represented by counsel; but the parent may waive counsel provided
 19 the court is satisfied such waiver is knowingly and voluntarily made.

20 **SECTION 34.** 48.23 (2g) of the statutes is created to read:

21 48.23 (2g) RIGHT OF INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.
 22 Whenever an Indian child is the subject of a proceeding involving the removal of the
 23 Indian child from the home of his or her parent or Indian custodian, placement of the
 24 Indian child in an out-of-home care placement, or termination of parental rights to

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1 the Indian child, the Indian child's parent or Indian custodian shall have the right
2 to be represented by counsel as provided in subs. (2) and (4).

3 **SECTION 35.** 48.23 (3) of the statutes is amended to read:

4 48.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. Except in proceedings under
5 s. 48.13, at any time, upon request or on its own motion, the court may appoint
6 counsel for the child or any party, unless the child or the party has or wishes to retain
7 counsel of his or her own choosing. ~~The~~ Except as provided in sub. (2g), the court may
8 not appoint counsel for any party other than the child in a proceeding under s. 48.13.

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

10 48.23 (4) PROVIDING COUNSEL. ~~In any situation under this section in which~~ If
11 a child has a right to be represented by counsel or is provided counsel at the discretion
12 of the court under this section and counsel is not knowingly and voluntarily waived,
13 the court shall refer the child to the state public defender and counsel shall be
14 appointed by the state public defender under s. 977.08 without a determination of
15 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
16 state public defender shall appoint counsel within 24 hours after that referral. Any
17 counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
18 the child in any appeal brought under s. 809.105 unless the child requests
19 substitution of counsel or extenuating circumstances make it impossible for counsel
20 to continue to represent the child. In any situation under sub. (2), ~~(2g),~~ or (2m) in
21 which a parent 18 years of age or over or an adult expectant mother is entitled to
22 representation by counsel; counsel is not knowingly and voluntarily waived; and it
23 appears that the parent or adult expectant mother is unable to afford counsel in full,
24 or the parent or adult expectant mother so indicates; the court shall refer the parent
25 or adult expectant mother to the authority for indigency determinations specified

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1 under s. 977.07 (1). In any other situation under this section in which a person has
2 a right to be represented by counsel or is provided counsel at the discretion of the
3 court, competent and independent counsel shall be provided and reimbursed in any
4 manner suitable to the court regardless of the person's ability to pay, except that the
5 court may not order a person who files a petition under s. 813.122 or 813.125 to
6 reimburse counsel for the child who is named as the respondent in that petition.

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

8 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
9 under s. 48.028 or 48.46.

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

11 48.235 (4m) (a) 7. Petition for relief from a judgment terminating parental
12 rights under s. 48.028 or 48.46 after the child is born.

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

14 48.255 (1) (cm) Whether the child may be subject to the federal Indian child
15 ~~welfare act~~ Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the child may be
16 subject to that act, the names and addresses of the child's Indian custodian, if any,
17 and Indian tribe, if known.

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

19 48.255 (1) (g) If the petitioner knows or has reason to know that the child is an
20 Indian child, and if the child has been removed from the home of his or her parent
21 or Indian custodian, reliable and credible information showing that continued
22 custody of the child by the child's parent or Indian custodian is likely to result in
23 serious emotional or physical damage to the child under s. 48.028 (4) (d) 1. and
24 reliable and credible information showing that active efforts under s. 48.028 (4) (d)
25 2. have been made to prevent the breakup of the Indian ^{child's} family and that those efforts

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1 have proved unsuccessful. The petition shall set forth with specificity both the
2 information required under this paragraph and the information required under par.
3 (f).

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

5 48.255 (1m) (d) Whether the unborn child, when born, may be subject to the
6 federal Indian Child Welfare Act, 25 USC ~~1911~~ 1901 to 1963, and, if the unborn child
7 may be subject to that act, the name and address of the Indian tribe in which the
8 unborn child may be eligible for affiliation when born, if known.

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

10 48.255 (1m) (g) If the petitioner knows or has reason to know that the expectant
11 mother is an Indian child, and if the child expectant mother has been removed from
12 the home of her parent or Indian custodian, reliable and credible information
13 showing that continued custody of the child expectant mother by her parent or
14 Indian custodian is likely to result in serious emotional or physical damage to the
15 child expectant mother under s. 48.028 (4) (d) 1. and reliable and credible
16 information showing that active efforts under s. 48.028 (4) (d) 2. have been made to
17 prevent the breakup of the Indian ^{child's} family and that those efforts have proved
18 unsuccessful. The petition shall set forth with specificity both the information
19 required under this paragraph and the information required under par. (f).

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

21 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) ~~and~~, (f), and (g)
22 or (1m) (a) to (d) ~~and~~, (f), and (g) are not known or cannot be ascertained by the
23 petitioner, the petition shall so state.

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

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1 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
2 child is 12 years of age or over and to the parents, guardian, legal custodian and
3 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
4 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
5 and physical custodian and the unborn child by the unborn child's guardian ad litem
6 or to the adult expectant mother, the unborn child through the unborn child's
7 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A~~ If
8 the child is an Indian child who has been removed from the home of his or her parent
9 or Indian custodian or the unborn child will be an Indian child when born, a copy of
10 a petition under sub. (1) or (1m) shall also be given to the ~~tribe or band with which~~
11 ~~the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian tribe
12 with which the unborn child may be eligible for affiliation when born, ~~if the child is~~
13 ~~an Indian child or the unborn child may be an Indian child when born.~~

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

15 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
16 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
17 who is a child, the court shall ~~also~~ notify, under s. 48.273, the child, any parent,
18 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
19 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by
20 the unborn child's guardian ad litem, if applicable, and any person specified in par.
21 (b), (d), or (e), if applicable, of all hearings involving the child except hearings on
22 motions for which notice ~~need only~~ must be provided only to the child and his or her
23 counsel. ~~When~~ If parents who are entitled to notice have the same place of residence,
24 notice to one ~~shall constitute~~ constitutes notice to the other. The first notice to any
25 interested party, foster parent, treatment foster parent, or other physical custodian

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

2 48.30 (7) If the petition is contested, the court, subject to s. 48.299 (9), shall set
3 a date for the fact-finding hearing which allows reasonable time for the parties to
4 prepare but is no more than 20 days after the plea hearing for a child who is held in
5 secure custody and no more than 30 days after the plea hearing for a child or an
6 expectant mother who is not held in secure custody.

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

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

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

20 48.31 (1) In this section, "fact-finding hearing" means a hearing to determine
21 if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate
22 parental rights are proved by clear and convincing evidence. In the case of a petition
23 to terminate parental rights to an Indian child, "fact-finding hearing" means a
24 hearing to determine if the allegations, other than the allegations under s. 48.42 (1)
25 (e) relating to serious emotional or physical damage, are proved by clear and

~~in the petition~~
in the petition ✓

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1 within 30 days after the date of that finding to determine the permanency plan for
2 the child. ~~If a hearing is held under this subdivision, the agency responsible for~~
3 ~~preparing the permanency plan shall file the permanency plan with the court not less~~
4 ~~than 5 days before the date of the hearing.~~

as affected by 2009 Wisconsin Act 28

5
6

SECTION 63. 48.32 (1) (c) 2. of the statutes is repealed.

SECTION 64. 48.32 (1) (c) 3. of the statutes is repealed.

SECTION 65. 48.32 (1) (d) of the statutes is created to read:

8 48.32 (1) (d) 1. In the case of an Indian child, if at the time the consent decree
9 is entered into the Indian child is placed outside the home of his or her parent or
10 Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living
11 outside that home without a court order and if the consent decree maintains the
12 Indian child in that placement or other living arrangement, the consent decree shall
13 include a finding supported by clear and convincing evidence, including the
14 testimony of one or more qualified expert witnesses, that continued custody of the
15 Indian child by the parent or Indian custodian is likely to result in serious emotional
16 or physical damage to the child under s. 48.028 (4) (d) 1. and a finding ~~as to whether~~

~~the county department, department in a county having a population of 500,000 or
more, or agency primarily responsible for providing services to the child has made~~

18
19 *That*

have been made

child's

19 ~~active efforts under s. 48.028 (4) (d) 2. to prevent the breakup of the Indian family~~
20 and that those efforts have proved unsuccessful. The findings under this subdivision
21 shall be in addition to the findings under par. (b) 1., except that for the sole purpose
22 of determining whether the cost of providing care for an Indian child is eligible for
23 reimbursement under 42 USC 670 to 679b, the findings under this subdivision and
24 the findings under par. (b) 1. shall be considered to be the same findings.

BILL

1 2. If the placement or other living arrangement under subd. 1. departs from the
2 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c),
3 the court shall also find good cause, as described in s. 48.028 (7) (e), for departing
4 from that order.

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

6 48.33 (4) (d) If the agency knows or has reason to know that the child is an
7 Indian child who is being removed from the home of his or her parent or Indian
8 custodian, a description of any efforts undertaken to determine whether the child is
9 an Indian child; specific information showing that continued custody of the child by
10 the parent or Indian custodian is likely to result in serious emotional or physical
11 damage to the child under s. 48.028 (4) (d) 1.; specific information showing that ~~the~~
12 ~~county department, department in a county having a population of 500,000 or more,~~
13 ~~or agency primarily responsible for providing services to the child has made~~ active
14 efforts under s. 48.028 (4) (d) 2) ^{have been made} to ^{child's} prevent the breakup of the Indian family and that
15 those efforts have proved unsuccessful; a statement as to whether the out-of-home
16 care placement recommended is in compliance with the order of placement
17 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c); and, if the
18 recommended placement is not in compliance with that order, specific information
19 showing good cause, as described in s. 48.028 (7) (e), for departing from that order.

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

21 48.335 (3j) At hearings under this section involving an Indian child, if the
22 agency, as defined in s. 48.38 (1) (a), is recommending removal of the Indian child
23 from the home of his or her parent or Indian custodian and placement of the Indian
24 child in a foster home, treatment foster home, group home, or residential care center

BILL

SECTION 70

1 48.355 (2) (b) 6v. If the child is an Indian child who is being removed from the
2 home of his or her parent or Indian custodian and placed outside that home, a finding
3 supported by clear and convincing evidence, including the testimony of one or more
4 qualified expert witnesses, that continued custody of the Indian child by the parent
5 or Indian custodian is likely to result in serious emotional or physical damage to the
6 child under s. 48.028 (4) (d) 1. and a finding ~~as to whether the county department,~~
7 ~~department in a county having a population of 500,000 or more, or agency primarily~~
8 ~~responsible for providing services under a court order has made active efforts under~~
9 s. 48.028 (4) (d) 2 ^{have been made} ~~to~~ ^{children} prevent the breakup of the Indian family and that those efforts
10 have proved unsuccessful. The findings under this subdivision shall be in addition
11 to the findings under subd. 6., except that for the sole purpose of determining
12 whether the cost of providing care for an Indian child is eligible for reimbursement
13 under 42 USC 670 to 679b, the findings under this subdivision and the findings
14 under subd. 6. shall be considered to be the same findings. The findings under this
15 subdivision are not required if they were made in a previous order in the proceeding
16 unless a change in circumstances warrants new findings.

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

18 48.355 (2) (d) The court shall provide a copy of a dispositional order relating
19 to a child in need of protection or services to the child's parent, guardian, legal
20 custodian, or trustee, to the child through the child's counsel or guardian ad litem
21 and, to the child's court-appointed special advocate, and, if the child is an Indian
22 child who has been removed from the home of his or her parent or Indian custodian
23 and placed outside that home, to the Indian child's Indian custodian and tribe. The
24 court shall provide a copy of a dispositional order relating to an unborn child in need
25 of protection or services to the expectant mother, to the unborn child through the

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1 unborn child's guardian ad litem and, if the expectant mother is a child, to her, to the
2 parent, guardian, legal custodian, or trustee of a child expectant mother and, if the
3 expectant mother is an Indian child, to the expectant mother's Indian custodian and
4 tribe.

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

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

13 SECTION 73. 48.355 (2d) (c) 2. of the statutes is repealed. ^{§ as affected by 2009}
14 SECTION 74. 48.355 (2d) (c) 3. of the statutes is repealed. ^{Wisconsin Act 28,}

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

16 48.355 (2d) (d) This subsection does not affect the requirement under sub. (2)
17 (b) 6v. that the court include in a dispositional order removing an Indian child from
18 the home of his or her parent or Indian custodian and placing the child outside that
19 home a finding as to whether the county department, department in a county having
20 a population of 500,000 or more, or agency primarily responsible for providing
21 services under a court order has made active efforts under s. 48.028 (4) (d) 2. to
22 prevent the breakup of the Indian family and that those efforts have proved
23 unsuccessful.

24 SECTION 76. 48.357 (1) (am) 1. of the statutes is amended to read: ^{have been made}

BILL**SECTION 76**

1 48.357 (1) (am) 1. If the proposed change in placement involves any change in
2 placement other than a change in placement specified in par. (c), the person or agency
3 primarily responsible for implementing the dispositional order, the district attorney,
4 or the corporation counsel shall cause written notice of the proposed change in
5 placement to be sent to the child, the parent, guardian, and legal custodian of the
6 child, any foster parent, treatment foster parent, or other physical custodian
7 described in s. 48.62 (2) of the child, the child's court-appointed special advocate,
8 and, if the child is an Indian child who has been removed from the home of his or her
9 parent or Indian custodian, the Indian child's Indian custodian and tribe. If the child
10 is the expectant mother of an unborn child under s. 48.133, written notice shall also
11 be sent to the unborn child by the unborn child's guardian ad litem. If the change
12 in placement involves an adult expectant mother is an adult of an unborn child under
13 s. 48.133, written notice shall be sent to the adult expectant mother and the unborn
14 child by the unborn child's guardian ad litem. The notice shall contain the name and
15 address of the new placement, the reasons for the change in placement, a statement
16 describing why the new placement is preferable to the present placement, and a
17 statement of how the new placement satisfies objectives of the treatment plan
18 ordered by the court.

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

20 48.357 (1) (am) 1g. If the child is an Indian child who has been removed from
21 the home of his or her parent or Indian custodian and if the proposed change in
22 placement would change the Indian child's placement from a placement outside that
23 home to another placement outside that home, a notice under subd. 1. shall also
24 contain a statement as to whether the new placement is in compliance with the order
25 of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and,

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

3 **SECTION 78.** 48.357 (1) (am) 2. of the statutes is renumbered 48.357 (1) (am)
4 2. (intro.) and amended to read:

5 48.357 (1) (am) 2. (intro.) Any person receiving the notice under subd. 1. or
6 notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed
7 special advocate, may obtain a hearing on the matter by filing an objection with the
8 court within 10 days after receipt of the notice. Placements Except as provided in
9 subd. 2m., placements may not be changed until 10 days after that notice is sent to
10 the court unless written waivers of objection are signed as follows:

11 a. By the parent, guardian, or legal custodian and, or Indian custodian, the
12 child, if 12 years of age or over, or and the child's tribe, if the child is an Indian child
13 who has been removed from the home of his or her parent or Indian custodian.

14 b. By the child expectant mother, if 12 years of age or over, her parent, guardian,
15 or legal custodian and, or Indian custodian, the unborn child by the unborn child's
16 guardian ad litem, or and the child expectant mother's tribe, if she is an Indian child
17 who has been removed from the home of his or her parent or Indian custodian.

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

20 2m. Changes in placement that were authorized in the dispositional order may
21 be made immediately if notice is given as required under subd. 1. In addition, a
22 hearing is not required for placement changes authorized in the dispositional order
23 except when an objection filed by a person who received notice alleges that new
24 information is available that affects the advisability of the court's dispositional order.

25 **SECTION 79.** 48.357 (1) (am) 3. of the statutes is amended to read:

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1 48.357 (1) (am) 3. If the court changes the child's placement from a placement
2 outside the home to another placement outside the home, the change in placement
3 order shall contain the applicable order ~~specified in~~ under sub. (2v) (a) 1m. and the
4 applicable statement ~~specified in~~ under sub. (2v) (a) 2. If the court changes the
5 placement of an Indian child who has been removed from the home of his or her
6 parent or Indian custodian from a placement outside that home to another placement
7 outside that home, the change in placement order shall, in addition, comply with the
8 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c),
9 unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from
10 that order.

11 **SECTION 80.** 48.357 (1) (c) 1m. of the statutes is created to read:

12 48.357 (1) (c) 1m. If the child is an Indian child and if the proposed change in
13 placement would change the placement of the child from a placement in the home of
14 his or her parent or Indian custodian to a placement outside that home, a request
15 under subd. 1. shall also contain specific information showing that continued custody
16 of the Indian child by the parent or Indian custodian is likely to result in serious
17 emotional or physical damage to the child under s. 48.028 (4) (d) 1., specific
18 information showing that ~~the agency primarily responsible for implementing the~~
19 ~~dispositional order has made~~ active efforts under s. 48.028 (4) (d) 2. ~~to prevent the~~
20 breakup of the Indian ^(children) family and that those efforts have proved unsuccessful, a
21 statement as to whether the new placement is in compliance with the order of
22 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if
23 the new placement is not in compliance with that order, specific information showing
24 good cause, as described in s. 48.028 (7) (e), for departing from that order.

25 **SECTION 81.** 48.357 (1) (c) 2. of the statutes is amended to read:

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1 48.357 (1) (c) 2. The court shall hold a hearing prior to ordering any change in
2 placement requested under subd. 1. Not less than 3 days prior to the hearing, the
3 court shall provide notice of the hearing, together with a copy of the request for the
4 change in placement, to the child, the parent, guardian, and legal custodian of the
5 child, the child's court-appointed special advocate, and all parties that are bound by
6 the dispositional order. ~~If, and, if the child is an Indian child, the Indian child's~~
7 Indian custodian and tribe. Subject to subd. 2m., if all parties consent, the court may
8 proceed immediately with the hearing.

9 **SECTION 82.** 48.357 (1) (c) 2m. of the statutes is created to read:

10 48.357 (1) (c) 2m. If the child is an Indian child and if the proposed change in
11 placement would change the placement of the child from a placement in the home of
12 his or her parent or Indian custodian to a placement outside that home, notice under
13 subd. 2. to the Indian child's parent, Indian custodian, and tribe shall be provided
14 in the manner specified in s. 48.028 (4) (a). No hearing on the request may be held
15 until at least 10 days after receipt of the notice by the Indian child's parent, Indian
16 custodian, and tribe or, if the identity or location of the Indian child's parent, Indian
17 custodian, or tribe cannot be determined, until at least 10 days after receipt of the
18 notice by the U.S. secretary of the interior. On request of the Indian child's parent,
19 Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional
20 days to enable the requester to prepare for the hearing.

21 **SECTION 83.** 48.357 (1) (c) 3. of the statutes is amended to read:

22 48.357 (1) (c) 3. If the court changes the child's placement from a placement in
23 the child's home to a placement outside the child's home, the change in placement
24 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., the applicable order
25 ~~specified in~~ under sub. (2v) (a) 1m., the applicable statement ~~specified in~~ under sub.

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1 (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified
2 in under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination
3 specified in under sub. (2v) (a) 3. If the court changes the placement of an Indian
4 child from a placement in the home of his or her parent or Indian custodian to a
5 placement outside that home, the change in placement order shall, in addition,
6 contain the findings under sub. (2v) (a) 4. and comply with the order of placement
7 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court
8 finds good cause, as described in s. 48.028 (7) (e), for departing from the order.

9 **SECTION 84.** 48.357 (2m) (a) of the statutes is amended to read:

10 48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian
11 custodian of the child, the expectant mother, the unborn child by the unborn child's
12 guardian ad litem, or any person or agency primarily bound by the dispositional
13 order, other than the person or agency responsible for implementing the order, may
14 request a change in placement under this paragraph. The request shall contain the
15 name and address of the new placement requested and shall state what new
16 information is available that affects the advisability of the current placement. If the
17 proposed change in placement would change the placement of a child placed in the
18 child's home to a placement outside the child's home, the request shall also contain
19 specific information showing that continued placement of the child in the home
20 would be contrary to the welfare of the child and, unless any of the circumstances
21 specified in under s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that
22 the agency primarily responsible for implementing the dispositional order has made
23 reasonable efforts to prevent the removal of the child from the home, while assuring
24 that the child's health and safety are the paramount concerns. The request shall be

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1 submitted to the court. ~~In addition, the~~ The court may also propose a change in
2 placement on its own motion.

3 **SECTION 85.** 48.357 (2m) (am) of the statutes is created to read:

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

17 2. If the proposed change in placement would change the placement of an
18 Indian child placed outside the home of his or her parent or Indian custodian to
19 another placement outside that home, a request under par. (a) shall also contain a
20 statement as to whether the new placement is in compliance with the order of
21 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) and, if
22 the new placement is not in compliance with that order, specific information showing
23 good cause, as described in s. 48.028 (7) (e), for departing from that order.

24 **SECTION 86.** 48.357 (2m) (b) of the statutes is amended to read:

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1 48.357 (2m) (b) The court shall hold a hearing ~~on the matter~~ prior to ordering
2 any change in placement requested or proposed under par. (a) if the request states
3 that new information is available that affects the advisability of the current
4 placement, ~~unless. A hearing is not required if~~ the requested or proposed change in
5 placement ~~involves any change in placement other than~~ does not involve a change
6 in placement of a child placed in the child's home to a placement outside the child's
7 home ~~and~~, written waivers of objection to the proposed change in placement are
8 signed by all persons entitled to receive notice under ~~sub. (1) (am) 1. this paragraph,~~
9 other than a court-appointed special advocate, and the court approves. If a hearing
10 is scheduled, not less than 3 days before the hearing the court shall notify the child,
11 the parent, guardian, and legal custodian of the child, any foster parent, treatment
12 foster parent, or other physical custodian described in s. 48.62 (2) of the child, the
13 child's court-appointed special advocate, all parties who are bound by the
14 dispositional order, and, if the child is an Indian child, the Indian child's Indian
15 custodian and tribe. If the child is the expectant mother of an unborn child under
16 s. 48.133, the court shall also notify the unborn child by the unborn child's guardian
17 ~~ad litem, or. If the change in placement involves an adult expectant mother of an~~
18 unborn child under s. 48.133, the court shall notify the adult expectant mother, the
19 unborn child by the unborn child's guardian ad litem, and all parties who are bound
20 by the dispositional order, at least 3 days prior to the hearing. A copy of the request
21 or proposal for the change in placement shall be attached to the notice. If Subject to
par. (bm), if all of the parties consent, the court may proceed immediately with the
hearing.

24 **SECTION 87.** 48.357 (2m) (bm) of the statutes is created to read:

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1 48.357 (2m) (bm) If the child is an Indian child, and if the proposed change in
2 placement would change the placement of the Indian child from a placement in the
3 home of his or her parent or Indian custodian to a placement outside that home,
4 notice under par. (b) to the Indian child's parent, Indian custodian, and tribe shall
5 be provided in the manner specified in s. 48.028 (4) (a). Notwithstanding par. (b), no
6 hearing on the request or proposal may be held until at least 10 days after receipt
7 of the notice by the Indian child's parent, Indian custodian, and tribe or, if the
8 identity or location of the Indian child's parent, Indian custodian, or tribe cannot be
9 determined, until at least 10 days after receipt of the notice by the U.S. secretary of
10 the interior. On request of the Indian child's parent, Indian custodian, or tribe, the
11 court shall grant a continuance of up to 20 additional days to enable the requester
12 to prepare for the hearing.

13 **SECTION 88.** 48.357 (2m) (c) of the statutes is renumbered 48.357 (2m) (c) 1. and
14 amended to read:

15 48.357 (2m) (c) 1. If the court changes the child's placement from a placement
16 in the child's home to a placement outside the child's home, the change in placement
17 order shall contain the findings ~~specified in~~ under sub. (2v) (a) 1., the applicable order
18 ~~specified in~~ under sub. (2v) (a) 1m., the applicable statement ~~specified in~~ under sub.
19 (2v) (a) 2., and, if in addition the court finds that any of the circumstances ~~specified~~
20 ~~in~~ under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination
21 ~~specified in~~ under sub. (2v) (a) 3. If the court changes the placement of an Indian
22 child from a placement in the home of his or her parent or Indian custodian to a
23 placement outside that home, the change in placement order shall, in addition,
24 contain the findings under sub. (2v) (a) 4. and comply with the order of placement

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1 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court
2 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

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

12 **SECTION 89.** 48.357 (2v) (a) 4. of the statutes is created to read:

13 48.357 (2v) (a) 4. If the change in placement order changes an Indian child's
14 placement from a placement in the home of his or her parent or Indian custodian to
15 a placement outside that home, a finding supported by clear and convincing
16 evidence, including the testimony of one or more qualified expert witnesses, that
17 continued custody of the Indian child by the parent or Indian custodian is likely to
18 result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1.

19 and a finding that ~~the agency primarily responsible for implementing the~~
20 ~~dispositional order has made~~ active efforts under s. 48.028 (4) (d) 2. ~~to prevent the~~
21 ~~breakup of the Indian~~ ^{children} family and that those efforts have proved unsuccessful. The

22 findings under this subdivision shall be in addition to the findings under subd. 1.,
23 except that for the sole purpose of determining whether the cost of providing care for
24 an Indian child is eligible for reimbursement under 42 USC 670 to 679b, the findings
25 under this subdivision and the findings under subd. 1. shall be considered to be the

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1 same findings. The findings under this subdivision are not required if they were
2 made in a previous order in the proceeding unless a change in circumstances
3 warrants new findings.

4 **SECTION 90.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
5 amended to read:

6 48.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
7 ~~specified in under~~ s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court
8 shall hold a hearing under s. 48.38 (4m) within 30 days after the date of that finding
9 to determine the permanency plan for the child. ~~If a hearing is held under this~~
10 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
11 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

12 **SECTION 91.** 48.357 (2v) (c) 2. of the statutes ^{§ as affected by 2009 Wisconsin Act 28,} is repealed. =

13 **SECTION 92.** 48.357 (2v) (c) 3. of the statutes [^] is repealed.

14 **SECTION 93.** 48.363 (1) (a) of the statutes is amended to read:

15 48.363 (1) (a) A child, the child's parent, guardian ~~or~~, legal custodian, or Indian
16 custodian, an expectant mother, an unborn child by the unborn child's guardian ad
17 litem, any person or agency bound by a dispositional order, or the district attorney
18 or corporation counsel in the county in which the dispositional order was entered
19 may request a revision in the order that does not involve a change in placement,
20 including a revision with respect to the amount of child support to be paid by a
21 parent, ~~or the~~. The court may ~~on its own motion~~ also propose such a revision. The
22 request or court proposal shall set forth in detail the nature of the proposed revision
23 and what new information is available that affects the advisability of the court's
24 disposition. The request or court proposal shall be submitted to the court. The court
25 shall hold a hearing on the matter prior to any revision of the dispositional order if

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

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

6 48.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
7 shall notify the child, the child's parent, guardian ~~and~~, legal custodian, and Indian
8 custodian, all parties bound by the dispositional order, the child's foster parent,
9 treatment foster parent, or other physical custodian described in s. 48.62 (2), the
10 child's court-appointed special advocate, the district attorney or corporation counsel
11 in the county in which the dispositional order was entered, and, if the child is an
12 Indian child who is placed outside the home of his or her parent or Indian custodian,
13 the Indian child's tribe. If the child is the expectant mother of an unborn child under
14 s. 48.133, the court shall also notify the unborn child by the unborn child's guardian
15 ad litem; or. If the proceeding involves an adult expectant mother of an unborn child
16 under s. 48.133, the court shall notify the adult expectant mother, the unborn child
17 through the unborn child's guardian ad litem, all parties bound by the dispositional
18 order, and the district attorney or corporation counsel in the county in which the
19 dispositional order was entered, at least 3 days prior to the hearing. A copy of the
20 request or proposal shall be attached to the notice. If all parties consent, the court
21 may proceed immediately with the hearing. No revision may extend the effective
22 period of the original order.

23 **SECTION 95.** 48.365 (1m) of the statutes is amended to read:

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

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

7 **SECTION 96.** 48.365 (2) of the statutes is amended to read:

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

23 **SECTION 97.** 48.365 (2g) (b) 4. of the statutes is created to read:

24 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home
 25 of his or her parent or Indian custodian, specific information showing that active

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

3 **SECTION 98.** 48.365 (2m) (a) 1. of the statutes is amended to read:

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

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

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