



2009 SENATE BILL 288

September 14, 2009 – Introduced by Senators JAUCH, HOLPERIN, VINEHOUT, COGGS, TAYLOR, LASSA, KREITLOW, LEHMAN, HANSEN, ROBSON, RISSER, PLALE, ERPENBACH, S. FITZGERALD, GROTHMAN, OLSEN and HOPPER, cosponsored by Representatives HRAYCHUCK, SHERMAN, GRIGSBY, ROYS, PASCH, YOUNG, BERCEAU, SINICKI, POPE-ROBERTS, SEIDEL, TURNER, BENEDICT, HILGENBERG, SHILLING, HUBLER, CLARK, MASON, NELSON, RADCLIFFE, SOLETSKI, VRUWINK, SMITH, SHERIDAN, MURSAU, ROTH, KLEEFISCH, FRISKE, TAUCHEN, HUEBSCH, VOS, BROOKS and RIPP. Referred to Committee on Children and Families and Workforce Development.

1 **AN ACT** *to repeal* 48.21 (5) (d) 2., 48.21 (5) (d) 3., 48.32 (1) (c) 2., 48.32 (1) (c) 3.,
2 48.355 (2d) (c) 2., 48.355 (2d) (c) 3., 48.357 (2v) (c) 2., 48.357 (2v) (c) 3., 48.365
3 (2m) (ad) 2., 48.685 (1) (e), 48.983 (1) (d), 48.983 (1) (e), 938.02 (18g), 938.21 (5)
4 (d) 2., 938.21 (5) (d) 3., 938.32 (1) (d) 2., 938.32 (1) (d) 3., 938.355 (2d) (c) 2.,
5 938.355 (2d) (c) 3., 938.357 (2v) (c) 2., 938.357 (2v) (c) 3., 938.365 (2m) (ad) 2.
6 and 938.538 (6m) (a) 1.; **to renumber** 938.02 (9m); **to renumber and amend**
7 48.20 (8), 48.21 (5) (d) 1., 48.273 (1), 48.32 (1) (c) 1., 48.355 (2d) (c) 1., 48.357 (1)
8 (am) 2., 48.357 (2m) (c), 48.357 (2v) (c) 1., 48.365 (2m) (ad) 1., 48.424 (1), 48.981
9 (1) (cs), 938.21 (5) (d) 1., 938.273 (1) (c), 938.32 (1) (d) 1., 938.355 (2d) (c) 1.,
10 938.357 (2m) (c), 938.357 (2v) (c) 1. and 938.365 (2m) (ad) 1.; **to amend** 48.02
11 (2), 48.02 (13), 48.02 (15), 48.028 (2) (e) and (f), 48.028 (7) (b) 2. and 3., 48.13
12 (intro.), 48.14 (intro.), 48.15, 48.19 (2), 48.195 (2) (d) 7., 48.20 (2) (ag), 48.20 (2)
13 (b), 48.20 (3), 48.20 (7) (c) (intro.), 48.20 (7) (c) 1., 48.20 (7) (d), 48.21 (3) (am),
14 48.21 (3) (b), 48.21 (3) (d), 48.21 (3) (e), 48.23 (2), 48.23 (3), 48.23 (4), 48.235 (4)

SENATE BILL 288

1 (a) 7., 48.235 (4m) (a) 7., 48.255 (1) (cm), 48.255 (1m) (d), 48.255 (2), 48.255 (4),
2 48.27 (3) (a) 1., 48.27 (3) (d), 48.27 (4) (a) 2., 48.299 (6) (d), 48.30 (1), 48.30 (2),
3 48.30 (6) (a), 48.30 (7), 48.305, 48.31 (1), 48.31 (7) (a), 48.315 (1m), 48.335 (3j)
4 (intro.), 48.345 (3) (intro.), 48.355 (2) (d), 48.357 (1) (am) 1., 48.357 (1) (am) 3.,
5 48.357 (1) (c) 2., 48.357 (1) (c) 3., 48.357 (2m) (a), 48.357 (2m) (b), 48.363 (1) (a),
6 48.363 (1) (b), 48.365 (1m), 48.365 (2), 48.365 (2m) (a) 1., 48.365 (2m) (a) 3.,
7 48.365 (2m) (ag), 48.38 (4m) (b) and (c), 48.38 (5) (b), 48.38 (5) (d), 48.38 (5) (e),
8 48.38 (5m) (b), 48.38 (5m) (d), 48.38 (5m) (e), 48.415 (intro.), 48.42 (1) (d), 48.42
9 (2) (c), 48.42 (4) (a), 48.422 (1), 48.422 (2), 48.422 (6) (a), 48.422 (8), 48.424 (2)
10 (intro.), 48.424 (2) (a), 48.424 (3), 48.424 (4) (intro.), 48.424 (4) (a), 48.424 (4) (b),
11 48.424 (5), 48.425 (1) (intro.), 48.428 (2) (a), 48.428 (2) (b), 48.43 (5) (c), 48.43
12 (5m), 48.43 (6) (a), 48.43 (6) (c), 48.46 (2), 48.48 (3m) (intro.), 48.48 (8m), 48.485,
13 48.487 (2), 48.487 (3) (b), 48.487 (4m) (b) (intro.), 48.487 (4m) (c), 48.487 (4m)
14 (d), 48.563 (3), 48.565 (intro.), 48.57 (3p) (h) 2., 48.57 (3p) (h) 3. (intro.), 48.57
15 (3p) (h) 4., 48.57 (3t), 48.63 (1), 48.63 (3) (b) 1., 48.63 (4), 48.63 (5) (b), 48.63 (5)
16 (c), 48.63 (5) (d) 3., 48.63 (5) (d) 4., 48.63 (5) (d) 5., 48.63 (5) (d) 6., 48.645 (1) (a),
17 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645 (2) (a) 4., 48.645 (2) (b), 48.685 (5) (a),
18 48.685 (5d) (a) (intro.), 48.685 (5d) (a) 2., 48.685 (5d) (a) 3., 48.685 (5d) (a) 3m.,
19 48.685 (5d) (a) 4., 48.685 (5d) (b), 48.825 (1) (b), 48.83 (1), 48.831 (2), 48.837 (1r)
20 (a), 48.837 (4) (c), 48.837 (4) (d), 48.837 (6) (c), 48.85 (1), 48.88 (2) (a) (intro.),
21 48.88 (2) (b), 48.89 (1), 48.91 (3), 48.93 (1d), 48.977 (4) (a) 1., 48.977 (4) (b) 6.,
22 48.977 (4) (c) 2., 48.978 (2) (b) 11., 48.981 (1) (ct), 48.981 (1) (i), 48.981 (3) (bm)
23 (intro.), 48.981 (3) (bm) 1., 48.981 (3) (bm) 2., 48.981 (7) (a) 10m., 48.981 (7) (a)
24 10r., 48.981 (7) (a) 11m., 938.02 (10m), 938.02 (12m), 938.02 (13), 938.02 (15),
25 938.02 (15c), 938.028 (2) (c), 938.028 (6) (a) 2. and 3., 938.13 (intro.), 938.15,

SENATE BILL 288

1 938.185 (4) (title), 938.185 (4) (intro.), 938.185 (4) (a), 938.185 (4) (b), 938.19 (2),
2 938.20 (2) (ag), 938.20 (2) (b), 938.20 (3), 938.20 (7) (c) 1., 938.20 (7) (d), 938.20
3 (8) (a), 938.21 (2) (title), 938.21 (2) (ag), 938.21 (3) (ag), 938.21 (3) (am), 938.21
4 (3) (b), 938.21 (3) (d), 938.21 (3) (e), 938.23 (3), 938.23 (4), 938.235 (4) (a) 7.,
5 938.24 (2r) (title), 938.24 (2r) (a) (intro.), 938.24 (2r) (a) 1., 938.24 (2r) (a) 2.,
6 938.24 (2r) (b), 938.243 (1) (e), 938.25 (2g) (title), 938.255 (1) (cm), 938.255 (1)
7 (cr) 1. a., 938.255 (1) (cr) 1. b., 938.255 (1) (cr) 1. c., 938.255 (1) (cr) 2., 938.255
8 (2), 938.255 (4), 938.27 (3) (a) 1., 938.27 (4) (b), 938.273 (1) (a), 938.273 (1) (b),
9 938.299 (6) (d), 938.299 (9) (title), 938.299 (9) (a), 938.30 (1), 938.30 (2), 938.30
10 (6) (a), 938.30 (7), 938.305, 938.31 (7) (a), 938.335 (3j) (intro.), 938.355 (2) (d),
11 938.355 (6) (an) 1., 938.355 (6) (b), 938.355 (6m) (am) 1., 938.355 (6m) (c),
12 938.357 (1) (am) 1., 938.357 (1) (am) 2., 938.357 (1) (am) 3., 938.357 (1) (c) 2.,
13 938.357 (1) (c) 3., 938.357 (2m) (a), 938.357 (2m) (b), 938.363 (1) (a), 938.363 (1)
14 (b), 938.365 (1m), 938.365 (2), 938.365 (2m) (a) 1., 938.365 (2m) (a) 3., 938.365
15 (2m) (ag), 938.38 (3) (intro.), 938.38 (4m) (b) and (c), 938.38 (5) (b), 938.38 (5)
16 (d), 938.38 (5) (e), 938.38 (5m) (b), 938.38 (5m) (d), 938.38 (5m) (e) and 938.538
17 (6m) (a) 4.; **to repeal and recreate** 48.01 (2), 48.028, 48.27 (3) (a) 1., 48.357 (1)
18 (am) 1., 48.357 (2m) (b), 48.363 (1) (b), 48.365 (2), 48.365 (2m) (ag), 48.38 (5) (b),
19 48.38 (5) (e), 48.38 (5m) (b), 48.38 (5m) (e), 48.428 (2) (a), 48.428 (2) (b), 48.43
20 (5m), 48.63 (1), 48.63 (4), 48.645 (1) (a), 48.645 (2) (a) 1., 48.645 (2) (a) 3., 48.645
21 (2) (a) 4., 48.645 (2) (b), 938.028, 938.27 (3) (a) 1., 938.357 (1) (am) 1., 938.357
22 (1) (am) 2., 938.357 (2m) (b), 938.363 (1) (b), 938.365 (2), 938.365 (2m) (ag),
23 938.38 (5) (b), 938.38 (5) (e), 938.38 (5m) (b) and 938.38 (5m) (e); and **to create**
24 48.02 (8d), 48.02 (8m), 48.02 (8p), 48.02 (8r), 48.02 (18j), 48.14 (12), 48.207 (1g),
25 48.23 (2g), 48.255 (1) (g), 48.255 (1m) (g), 48.273 (1) (ag), 48.273 (1) (c) 2., 48.299

SENATE BILL 288

1 (9), 48.31 (5), 48.315 (1) (j), 48.32 (1) (d), 48.33 (4) (d), 48.335 (3j), 48.345 (3m),
2 48.355 (2) (b) 6v., 48.355 (2d) (d), 48.357 (1) (am) 1g., 48.357 (1) (c) 1m., 48.357
3 (1) (c) 2m., 48.357 (2m) (am), 48.357 (2m) (bm), 48.357 (2v) (a) 4., 48.365 (2g) (b)
4 4., 48.38 (4) (i), 48.38 (4m), 48.38 (5) (c) 8., 48.41 (2) (e), 48.417 (2) (cm), 48.42
5 (1) (e), 48.42 (2g) (ag), 48.424 (1) (b), 48.425 (1) (cm), 48.427 (5), 48.427 (6) (b)
6 4., 48.43 (5) (bm), 48.831 (1r), 48.831 (4) (cm), 48.833 (3), 48.837 (2) (e), 48.88
7 (2) (ag), 48.93 (1v), 48.977 (4) (c) 1. j., 48.977 (4) (c) 2m., 48.977 (4) (g) 4., 806.245
8 (1m), 938.01 (3), 938.02 (8d), 938.02 (8g), 938.02 (8m), 938.02 (8p), 938.02 (8r),
9 938.02 (18j), 938.207 (1g), 938.23 (2g), 938.255 (1) (g), 938.27 (3) (d), 938.273 (1)
10 (ag), 938.273 (1) (c) 2., 938.299 (10), 938.31 (5), 938.315 (1) (a) 11., 938.32 (1) (e),
11 938.33 (4) (d), 938.335 (3j), 938.345 (1m), 938.355 (2) (b) 6v., 938.355 (2d) (d),
12 938.355 (6) (bm), 938.355 (6) (cr), 938.355 (6m) (bm), 938.355 (6m) (cr), 938.357
13 (1) (am) 1g., 938.357 (1) (c) 1m., 938.357 (1) (c) 2m., 938.357 (2m) (am), 938.357
14 (2m) (bm), 938.357 (2v) (a) 4., 938.365 (2g) (b) 4., 938.38 (4) (i), 938.38 (4m) and
15 938.38 (5) (c) 8. of the 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

SENATE BILL 288

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.

Jurisdiction

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:

SENATE BILL 288

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

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

3. Permits a juvenile court to find good cause to deny transfer of a proceeding to an Indian child’s tribe only if it is shown that: 1) the Indian child is 12 years of age or over and objects to the transfer; 2) 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 the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court’s rules of evidence; or 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. 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,

SENATE BILL 288

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 services and rehabilitation programs to prevent the breakup of the Indian child's 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 active efforts have been made to prevent the breakup of the Indian child's 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 child's family and that those efforts have proved unsuccessful. In addition, the bill requires an order extending a CHIPS or JIPS

SENATE BILL 288

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 child's 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; the bill requires a qualified expert witness to be chosen in that order of preference, 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. The bill also specifies that the evidence of active efforts to prevent the breakup of the Indian child's family must show that there has been an ongoing, vigorous, and concerted level of case work and that the active efforts were 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.

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

SENATE BILL 288

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 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

SENATE BILL 288

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 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

SENATE BILL 288

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 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

SENATE BILL 288

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

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

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:

1 **SECTION 1.** 48.01 (2) of the statutes is repealed and recreated to read:
2 48.01 (2) In Indian child custody proceedings, the best interests of the Indian
3 child shall be determined in accordance with the federal Indian Child Welfare Act,
4 25 USC 1901 to 1963, and the policy specified in this subsection. It is the policy of
5 this state for courts and agencies responsible for child welfare to do all of the
6 following:

SENATE BILL 288

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.

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

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

23 **SECTION 3.** 48.02 (8d) of the statutes is created to read:

SENATE BILL 288**SECTION 3**

1 48.02 **(8d)** “Indian” means any person who is a member of an Indian tribe or
2 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
3 1606.

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

5 48.02 **(8m)** “Indian child’s tribe” means one of the following:

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

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

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

12 48.02 **(8p)** “Indian custodian” means an Indian person who has legal custody
13 of an Indian child under tribal law or custom or under state law or to whom
14 temporary physical care, custody, and control has been transferred by the parent of
15 the child.

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

17 48.02 **(8r)** “Indian tribe” means any Indian tribe, band, nation, or other
18 organized group or community of Indians that is recognized as eligible for the
19 services provided to Indians by the U.S. secretary of the interior because of Indian
20 status, including any Alaska native village, as defined in 43 USC 1602 (c).

21 **SECTION 7.** 48.02 (13) of the statutes is amended to read:

22 48.02 **(13)** “Parent” means either a biological parent, a husband who has
23 consented to the artificial insemination of his wife under s. 891.40, or a parent by
24 adoption. If the child is a nonmarital child who is not adopted or whose parents do
25 not subsequently intermarry under s. 767.803, “parent” includes a person

SENATE BILL 288

1 acknowledged under s. 767.805 or a substantially similar law of another state or
2 adjudicated to be the biological father. “Parent” does not include any person whose
3 parental rights have been terminated. For purposes of the application of s. 48.028
4 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, “parent” means a
5 biological parent, an Indian husband who has consented to the artificial
6 insemination of his wife under s. 891.40, or a person who has lawfully adopted an
7 Indian child, including an adoption under tribal law or custom, and includes, in the
8 case of a nonmarital child who is not adopted or whose parents do not subsequently
9 intermarry under s. 767.803, a person acknowledged under s. 767.805 or a
10 substantially similar law of another state or adjudicated to be the biological father,
11 but does not include any person whose parental rights have been terminated.

12 **SECTION 8.** 48.02 (15) of the statutes is amended to read:

13 48.02 (15) “Relative” means a parent, stepparent, brother, sister, stepbrother,
14 stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd
15 cousin, nephew, niece, uncle, aunt, stepuncle, stepaunt, or any person of a preceding
16 generation as denoted by the prefix of grand, great, or great-great, whether by blood,
17 marriage, or legal adoption, or the spouse of any person named in this subsection,
18 even if the marriage is terminated by death or divorce. For purposes of the
19 application of s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to
20 1963, “relative” includes an extended family member, as defined in s. 48.028 (2) (am),
21 whether by blood, marriage, or adoption, including adoption under tribal law or
22 custom.

23 **SECTION 9.** 48.02 (18j) of the statutes is created to read:

24 48.02 (18j) “Tribal court” means a court that has jurisdiction over Indian child
25 custody proceedings, and that is either a court of Indian offenses or a court

SENATE BILL 288**SECTION 9**

1 established and operated under the code or custom of an Indian tribe, or any other
2 administrative body of an Indian tribe that is vested with authority over Indian child
3 custody proceedings.

4 **SECTION 10.** 48.028 of the statutes is repealed and recreated to read:

5 **48.028 Indian child welfare. (1) DECLARATION OF POLICY.** In Indian child
6 custody proceedings, the best interests of the Indian child shall be determined in
7 accordance with s. 48.01 (2).

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

9 (a) “Adoptive placement” means the permanent placement of an Indian child
10 for adoption.

11 (am) “Extended family member” means a person who is defined as a member
12 of an Indian child’s extended family by the law or custom of the Indian child’s tribe
13 or, in the absence of such a law or custom, a person who has attained the age of 18
14 years and who is the Indian child’s grandparent, aunt, uncle, brother, sister,
15 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

16 (b) “Former Indian custodian” means a person who was the Indian custodian
17 of an Indian child before termination of parental rights to and adoption of the Indian
18 child.

19 (c) “Former parent” means a person who was the parent of an Indian child
20 before termination of parental rights to and adoption of the Indian child.

21 (d) “Indian child custody proceeding” means a proceeding governed by the
22 federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which any of the following
23 may occur:

- 24 1. An adoptive placement.
- 25 2. An out-of-home care placement.

SENATE BILL 288

1 3. A preadoptive placement.

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

3 (e) “Out-of-home care placement” means the removal of an Indian child from
4 the home of his or her parent or Indian custodian for temporary placement in a foster
5 home, treatment foster home, group home, residential care center for children and
6 youth, or shelter care facility, in the home of a relative other than a parent, or in the
7 home of a guardian, from which placement the parent or Indian custodian cannot
8 have the child returned upon demand. “Out-of-home care placement” does not
9 include an adoptive placement, a preadoptive placement, or holding an Indian child
10 in custody under ss. 48.19 to 48.21.

11 (f) “Preadoptive placement” means the temporary placement of an Indian child
12 in a foster home, treatment foster home, group home, or residential care center for
13 children and youth, in the home of a relative other than a parent, or in the home of
14 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
15 placement.

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

17 1. A member of the Indian child’s tribe recognized by the Indian child’s tribal
18 community as knowledgeable regarding the tribe’s customs relating to family
19 organization or child-rearing practices.

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

22 3. A professional person having substantial education and experience in the
23 person’s professional specialty and having substantial knowledge of the customs,
24 traditions, and values of the Indian child’s tribe relating to family organization and
25 child-rearing practices.

SENATE BILL 288

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

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

8 **(3) JURISDICTION OVER INDIAN CHILD CUSTODY PROCEEDINGS.** (a) *Applicability.*
9 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
10 to any Indian child custody proceeding regardless of whether the Indian child is in
11 the legal custody or physical custody of an Indian parent, Indian custodian, extended
12 family member, or other person at the commencement of the proceeding and whether
13 the Indian child resides or is domiciled on or off of a reservation. A court assigned
14 to exercise jurisdiction under this chapter may not determine whether this section
15 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to an Indian
16 child custody proceeding based on whether the Indian child is part of an existing
17 Indian family.

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

24 2. Subdivision 1. does not prevent an Indian child who resides or is domiciled
25 within a reservation, but who is temporarily located off the reservation, from being

SENATE BILL 288

1 taken into and held in custody under ss. 48.19 to 48.21 in order to prevent imminent
2 physical harm or damage to the Indian child. The person taking the Indian child into
3 custody or the intake worker shall immediately release the Indian child from custody
4 upon determining that holding the Indian child in custody is no longer necessary to
5 prevent imminent physical damage or harm to the Indian child and shall
6 expeditiously restore the Indian child to his or her parent or Indian custodian,
7 release the Indian child to an appropriate official of the Indian child's tribe, or
8 initiate an Indian child custody proceeding, as may be appropriate.

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

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

17 2. The Indian child's tribe does not have a tribal court, or the tribal court of the
18 Indian child's tribe declines jurisdiction.

19 3. The court determines that good cause exists to deny the transfer. In
20 determining whether good cause exists to deny the transfer, the court may not
21 consider any perceived inadequacy of the tribal social services department or the
22 tribal court of the Indian child's tribe. The court may determine that good cause
23 exists to deny the transfer only if the person opposing the transfer shows by clear and
24 convincing evidence that any of the following applies:

25 a. The Indian child is 12 years of age or over and objects to the transfer.

SENATE BILL 288**SECTION 10**

1 b. The evidence or testimony necessary to decide the case cannot be presented
2 in tribal court without undue hardship to the parties or the witnesses and that the
3 tribal court is unable to mitigate the hardship by making arrangements to receive
4 the evidence or testimony by use of telephone or live audiovisual means, by hearing
5 the evidence or testimony at a location that is convenient to the parties and
6 witnesses, or by use of other means permissible under the tribal court's rules of
7 evidence.

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

13 (d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction
14 under this chapter determines that the petitioner in an Indian child custody
15 proceeding has improperly removed the Indian child from the custody of his or her
16 parent or Indian custodian or has improperly retained custody of the Indian child
17 after a visit or other temporary relinquishment of custody, the court shall decline
18 jurisdiction over the petition and immediately return the Indian child to the custody
19 of the parent or Indian custodian, unless the court determines that returning the
20 Indian child to his or her parent or Indian custodian would subject the Indian child
21 to substantial and immediate danger or the threat of that danger.

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

SENATE BILL 288

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

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

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

SENATE BILL 288

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

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

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

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

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

SENATE BILL 288

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

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

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

12 (f) *Qualified expert witness; order of preference.* 1. Any party to a proceeding
13 involving the out-of-home placement of, or involuntary termination of parental
14 rights to, an Indian child may call a qualified expert witness. Subject to subd. 2., a
15 qualified expert witness shall be chosen in the following order of preference:

16 a. A member of the Indian child's tribe described in sub. (2) (g) 1.

17 b. A member of another tribe described in sub. (2) (g) 2.

18 c. A professional person described in sub. (2) (g) 3.

19 d. A layperson described in sub. (2) (g) 4.

20 2. A qualified expert witness from a lower order of preference may be chosen
21 only if the party calling the qualified expert witness shows that it has made a diligent
22 effort to secure the attendance of a qualified expert witness from a higher order of
23 preference. A qualified expert witness from a lower order of preference may not be
24 chosen solely because a qualified expert witness from a higher order of preference is
25 able to participate in the Indian child custody proceeding only by telephone or live

SENATE BILL 288**SECTION 10**

1 audiovisual means as prescribed in s. 807.13 (2). The fact that a qualified expert
2 witness called by one party is from a lower order of preference under subd. 1. than
3 a qualified expert witness called by another party may not be the sole consideration
4 in weighing the testimony and opinions of the qualified expert witnesses. The court
5 shall determine the qualifications of a qualified expert witness as provided in ch. 907.

6 (g) *Active efforts standard.* 1. The court may not order an Indian child to be
7 removed from the home of the Indian child’s parent or Indian custodian and placed
8 in an out-of-home care placement unless the evidence of active efforts under par. (d)
9 2. or (e) 2. shows that there has been an ongoing, vigorous, and concerted level of case
10 work and that the active efforts were made in a manner that takes into account the
11 prevailing social and cultural values, conditions, and way of life of the Indian child’s
12 tribe and that utilizes the available resources of the Indian child’s tribe, tribal and
13 other Indian child welfare agencies, extended family members of the Indian child,
14 other individual Indian caregivers, and other culturally appropriate service
15 providers. The consideration by the court or jury of whether active efforts were made
16 under par. (d) 2. or (e) 2. shall include whether all of the following activities were
17 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 circumstances of the
21 Indian child’s family and to assist in developing a case plan that uses the resources
22 of the tribe and of the Indian community, including traditional and customary
23 support, actions, and services, to address those circumstances.

SENATE BILL 288

1 am. A comprehensive assessment of the situation of the Indian child's family
2 was completed, including a determination of the likelihood of protecting the Indian
3 child's health, safety, and welfare effectively in the Indian child's home.

4 b. Representatives of the Indian child's tribe were identified, notified, and
5 invited to participate in all aspects of the Indian child custody proceeding at the
6 earliest possible point in the proceeding and their advice was actively solicited
7 throughout the proceeding.

8 c. Extended family members of the Indian child, including extended family
9 members who were identified by the Indian child's tribe or parents, were notified and
10 consulted with to identify and provide family structure and support for the Indian
11 child, to assure cultural connections, and to serve as placement resources for the
12 Indian child.

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

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

21 f. Community resources offering housing, financial, and transportation
22 assistance and in-home support services, in-home intensive treatment services,
23 community support services, and specialized services for members of the Indian
24 child's family with special needs were identified, information about those resources

SENATE BILL 288

1 was provided to the Indian child’s family, and the Indian child’s family was actively
2 assisted or offered active assistance in accessing those resources.

3 g. Monitoring of client progress and client participation in services was
4 provided.

5 h. A consideration of alternative ways of addressing the needs of the Indian
6 child’s family was provided, if services did not exist or if existing services were not
7 available to the family.

8 2. If any of the activities specified in subd. 1. a. to h. were not conducted, the
9 person seeking the out-of-home care placement or involuntary termination of
10 parental rights shall submit documentation to the court explaining why the activity
11 was not conducted.

12 **(5) VOLUNTARY PROCEEDINGS; CONSENT; WITHDRAWAL.** (a) *Out-of-home care*
13 *placement.* A voluntary consent by a parent or Indian custodian to an out-of-home
14 care placement of an Indian child under s. 48.63 (1) or (5) (b) is not valid unless the
15 consent is executed in writing, recorded before a judge, and accompanied by a written
16 certification by the judge that the terms and consequences of the consent were fully
17 explained in detail to and were fully understood by the parent or Indian custodian.
18 The judge shall also certify that the parent or Indian custodian fully understood the
19 explanation in English or that the explanation was interpreted into a language that
20 the parent or Indian custodian understood. Any consent given under this paragraph
21 prior to or within 10 days after the birth of the Indian child is not valid. A parent or
22 Indian custodian who has executed a consent under this paragraph may withdraw
23 the consent for any reason at any time, and the Indian child shall be returned to the
24 parent or Indian custodian. A parent or Indian custodian who has executed a consent

SENATE BILL 288

1 under this paragraph may also move to invalidate the out-of-home care placement
2 under sub. (6).

3 (b) *Termination of parental rights.* A voluntary consent by a parent to a
4 termination of parental rights under s. 48.41 (2) (e) is not valid unless the consent
5 is executed in writing, recorded before a judge, and accompanied by a written
6 certification by the judge that the terms and consequences of the consent were fully
7 explained in detail to and were fully understood by the parent. The judge shall also
8 certify that the parent fully understood the explanation in English or that the
9 explanation was interpreted into a language that the parent understood. Any
10 consent given under this paragraph prior to or within 10 days after the birth of the
11 Indian child is not valid. A parent who has executed a consent under this paragraph
12 may withdraw the consent for any reason at any time prior to the entry of a final
13 order terminating parental rights, and the Indian child shall be returned to his or
14 her parent unless an order or agreement specified in s. 48.368 (1) or 938.368 (1)
15 provides for a different placement. After the entry of a final order terminating
16 parental rights, a parent who has executed a consent under this paragraph may
17 withdraw that consent as provided in par. (c), move to invalidate the termination of
18 parental rights under sub. (6), or move for relief from the judgment under s. 48.46
19 (2).

20 (c) *Withdrawal of consent after order granting adoption.* After the entry of a
21 final order granting adoption of an Indian child, a parent who has consented to
22 termination of parental rights under s. 48.41 (2) (e) may withdraw that consent and
23 move the court for relief from the judgment on the grounds that the consent was
24 obtained through fraud or duress. Any such motion shall be filed within 2 years after
25 the entry of an order granting adoption of the Indian child. A motion under this

SENATE BILL 288

1 subsection does not affect the finality or suspend the operation of the judgment or
2 order terminating parental rights or granting adoption. If the court finds that the
3 consent was obtained through fraud or duress, the court shall vacate the judgment
4 or order terminating parental rights and, if applicable, the order granting adoption
5 and return the Indian child to the custody of the parent, unless an order or agreement
6 specified in s. 48.368 (1) or 938.368 (1) that was in effect prior to the termination of
7 parental rights provides for a different placement.

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

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

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

24 (b) *Out-of-home care or preadoptive placement; preferences.* Any Indian child
25 who is accepted for an out-of-home care placement or a preadoptive placement shall

SENATE BILL 288

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

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

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

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

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

16 (bm) *Temporary physical custody; preferences.* Any Indian child who is being
17 held in temporary physical custody under s. 48.205 (1) shall be placed in compliance
18 with par. (b) or, if applicable, par. (c), unless the person responsible for determining
19 the placement finds good cause, as described in par. (e), for departing from the order
20 of placement preference under par. (b) or finds that emergency conditions necessitate
21 departing from that order. When the reason for departing from that order is resolved,
22 the Indian child shall be placed in compliance with the order of placement preference
23 under par. (b) or, if applicable, par. (c).

24 (c) *Tribal or personal preferences.* In placing an Indian child under par. (a), (b),
25 or (bm), if the Indian child's tribe has established, by resolution, an order of

SENATE BILL 288**SECTION 10**

1 preference that is different from the order specified in par. (a) or (b), the order of
2 preference established by that tribe shall be followed, in the absence of good cause,
3 as described in par. (e), to the contrary, so long as the placement under par. (a) is
4 appropriate for the Indian child's special needs, if any, and the placement under par.
5 (b) or (bm) is the least restrictive setting appropriate for the Indian child's needs as
6 specified in par. (b). When appropriate, the preference of the Indian child or parent
7 shall be considered, and, when a parent who has consented to the placement
8 evidences a desire for anonymity, that desire shall be given weight, in determining
9 the placement.

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

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

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

22 b. Any extraordinary physical, mental, or emotional health needs of the Indian
23 child requiring highly specialized treatment services as established by the testimony
24 of an expert witness, including a qualified expert witness. The length of time that

SENATE BILL 288

1 an Indian child has been in a placement does not, in itself, constitute an
2 extraordinary emotional health need.

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

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

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

14 **(8) RETURN OF CUSTODY.** (a) *Adoption vacated, set aside, or terminated.* If a final
15 order granting adoption of an Indian child is vacated or set aside or if the parental
16 rights to an Indian child of all adoptive parents of the Indian child are voluntarily
17 terminated, the Indian child's former parent or former Indian custodian may petition
18 for the return of custody of the Indian child. On receipt of a return of custody petition,
19 the court shall set a date for a hearing on the petition that allows reasonable time
20 for the parties to prepare. The court shall provide notice of the hearing to the
21 guardian and legal custodian of the Indian child, to all other interested parties as
22 provided in s. 48.27 (6), and to the Indian child's former parent and former Indian
23 custodian. At the conclusion of the hearing, the court shall grant a petition for the
24 return of custody of the Indian child to the Indian child's former parent or former

SENATE BILL 288**SECTION 10**

1 Indian custodian unless there is a showing that return of custody is not in the best
2 interests of the Indian child.

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

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

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

20 (b) *Confidentiality of parent's identity.* The court shall give the birth parent of
21 an Indian child the opportunity to file an affidavit indicating that the birth parent
22 wishes the U.S. secretary of the interior to maintain the confidentiality of the birth
23 parent's identity. If the birth parent files that affidavit, the court shall include the
24 affidavit with the information provided to the U.S. secretary of the interior under

SENATE BILL 288

1 par. (a), and that secretary shall maintain the confidentiality of the birth parent's
2 identity as required under 25 USC 1951 (a) and (b).

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

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

14 **SECTION 11.** 48.028 (2) (e) and (f) of the statutes, as affected by 2009 Wisconsin
15 Act ... (this act), are amended to read:

16 48.028 **(2)** (e) "Out-of-home care placement" means the removal of an Indian
17 child from the home of his or her parent or Indian custodian for temporary placement
18 in a foster home, ~~treatment foster home~~, group home, residential care center for
19 children and youth, or shelter care facility, in the home of a relative other than a
20 parent, or in the home of a guardian, from which placement the parent or Indian
21 custodian cannot have the child returned upon demand. "Out-of-home care
22 placement" does not include an adoptive placement, a preadoptive placement, or
23 holding an Indian child in custody under ss. 48.19 to 48.21.

24 (f) "Preadoptive placement" means the temporary placement of an Indian child
25 in a foster home, ~~treatment foster home~~, group home, or residential care center for

SENATE BILL 288

1 children and youth, in the home of a relative other than a parent, or in the home of
2 a guardian after a termination of parental rights but prior to or in lieu of an adoptive
3 placement.

4 **SECTION 12.** 48.028 (7) (b) 2. and 3. of the statutes, as affected by 2009
5 Wisconsin Act (this act), are amended to read:

6 48.028 (7) (b) 2. A foster home ~~or treatment foster home~~ licensed, approved, or
7 specified by the Indian child's tribe.

8 3. An Indian foster home ~~or treatment foster home~~ licensed or approved by the
9 department, a county department, or a child welfare agency.

10 **SECTION 13.** 48.13 (intro.) of the statutes is amended to read:

11 **48.13 Jurisdiction over children alleged to be in need of protection or**
12 **services.** (intro.) The Except as provided in s. 48.028 (3), the court has exclusive
13 original jurisdiction over a child alleged to be in need of protection or services which
14 can be ordered by the court, and:

15 **SECTION 14.** 48.14 (intro.) of the statutes is amended to read:

16 **48.14 Jurisdiction over other matters relating to children.** (intro.) The
17 Except as provided in s. 48.028 (3), the court has exclusive jurisdiction over:

18 **SECTION 15.** 48.14 (12) of the statutes is created to read:

19 48.14 (12) Proceedings under s. 48.028 (8) for the return of custody of an Indian
20 child to his or her former parent, as defined in s. 48.028 (2) (c), or former Indian
21 custodian, as defined in s. 48.028 (2) (b), following a vacation or setting aside of an
22 order granting adoption of the Indian child or following an order voluntarily
23 terminating parental rights to an Indian child of all adoptive parents of the Indian
24 child.

25 **SECTION 16.** 48.15 of the statutes is amended to read:

SENATE BILL 288

1 **48.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
2 ~~contained in ss. 48.13, 48.133 and 48.14~~ Except as provided in s. 48.028 (3), nothing
3 ~~in this chapter deprives other courts~~ another court of the right to determine the legal
4 custody of ~~children~~ a child by habeas corpus or to determine the legal custody or
5 guardianship of ~~children~~ a child if the legal custody or guardianship is incidental to
6 the determination of ~~causes~~ an action pending in ~~the other courts.~~ But that court.
7 Except as provided in s. 48.028 (3), the jurisdiction of the court assigned to exercise
8 jurisdiction under this chapter and ch. 938 is paramount in all cases involving
9 children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn
10 children and their expectant mothers alleged to come within the provisions of ss.
11 48.133 and 48.14 (5).

12 **SECTION 17.** 48.19 (2) of the statutes is amended to read:

13 48.19 (2) When a child is taken into physical custody ~~as provided in~~ under this
14 section, the person taking the child into custody shall immediately attempt to notify
15 the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the child by the
16 most practical means. The person taking the child into custody shall continue such
17 attempt until the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the
18 child are notified, or the child is delivered to an intake worker under s. 48.20 (3),
19 whichever occurs first. If the child is delivered to the intake worker before the
20 parent, guardian ~~and,~~ legal custodian, and Indian custodian are notified, the intake
21 worker, or another person at his or her direction, shall continue the attempt to notify
22 until the parent, guardian ~~and,~~ legal custodian, and Indian custodian of the child are
23 notified.

24 **SECTION 18.** 48.195 (2) (d) 7. of the statutes is amended to read:

SENATE BILL 288**SECTION 18**

1 48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an
2 ~~American Indian tribe or band~~ to perform child welfare functions, that is exercising
3 jurisdiction over proceedings relating to the child, an attorney representing the
4 interests of the ~~American Indian tribe or band~~ in those proceedings, or an attorney
5 representing the interests of the child in those proceedings.

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

7 48.20 (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into
8 custody shall make every effort to release the child immediately to the child's parent,
9 guardian ~~or~~, legal custodian, or Indian custodian.

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

11 48.20 (2) (b) If the child's parent, guardian ~~or~~, legal custodian, or Indian
12 custodian is unavailable, unwilling, or unable to provide supervision for the child,
13 the person who took the child into custody may release the child to a responsible
14 adult after counseling or warning the child as may be appropriate.

15 **SECTION 21.** 48.20 (3) of the statutes is amended to read:

16 48.20 (3) If the child is released under sub. (2) (b) to (d), the person who took
17 the child into custody shall immediately notify the child's parent, guardian ~~and~~, legal
18 custodian, and Indian custodian of the time and circumstances of the release and the
19 person, if any, to whom the child was released. If the child is not released under sub.
20 (2), the person who took the child into custody shall arrange in a manner determined
21 by the court and law enforcement agencies for the child to be interviewed by the
22 intake worker under s. 48.067 (2), ~~and~~. The person who took the child into custody
23 shall make a statement in writing with supporting facts of the reasons why the child
24 was taken into physical custody and shall give any child 12 years of age or older a
25 copy of the statement ~~in addition to giving a copy to the intake worker.~~ ~~When~~ and

SENATE BILL 288

1 to any child 12 years of age or older. If the intake interview is not done in person, the
2 report may be read to the intake worker.

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

4 48.20 (7) (c) (intro.) The intake worker may release the child as follows:

5 **SECTION 23.** 48.20 (7) (c) 1. of the statutes is amended to read:

6 48.20 (7) (c) 1. To a parent, guardian ~~or,~~ legal custodian, or Indian custodian,
7 or, to a responsible adult if the parent, guardian ~~or,~~ legal custodian, or Indian
8 custodian is unavailable, unwilling, or unable to provide supervision for the child,
9 ~~release the child to a responsible adult,~~ counseling or warning the child as may be
10 appropriate; ~~or, if a the~~ child is 15 years of age or older, ~~release the child~~ without
11 immediate adult supervision, counseling or warning the child as may be appropriate;
12 ~~or,~~

13 **SECTION 24.** 48.20 (7) (d) of the statutes is amended to read:

14 48.20 (7) (d) If the child is released from custody, the intake worker shall
15 immediately notify the child's parent, guardian ~~and,~~ legal custodian, and Indian
16 custodian of the time and circumstances of the release and the person, if any, to whom
17 the child was released.

18 **SECTION 25.** 48.20 (8) of the statutes is renumbered 48.20 (8) (a) and amended
19 to read:

20 48.20 (8) (a) If a child is held in custody, the intake worker shall notify the
21 child's parent, guardian ~~and,~~ legal custodian, and Indian custodian of the reasons for
22 holding the child in custody and of the child's whereabouts unless there is reason to
23 believe that notice would present imminent danger to the child. The parent,
24 guardian ~~and,~~ legal custodian, and Indian custodian shall also be notified of the time
25 and place of the detention hearing required under s. 48.21, the nature and possible

SENATE BILL 288

1 consequences of that hearing, ~~and the right to present and cross-examine witnesses~~
2 ~~at the hearing, and, in the case of a parent or Indian custodian of an Indian child who~~
3 ~~is the subject of an Indian child custody proceeding, as defined in s. 48.028 (2) (d) 2.,~~
4 ~~the right to counsel under s. 48.028 (4) (b).~~ If the parent, guardian ~~or,~~ legal custodian,
5 ~~or Indian custodian~~ is not immediately available, the intake worker or another
6 person designated by the court shall provide notice as soon as possible. When the
7 child is 12 years of age or older, the child shall receive the same notice about the
8 detention hearing as the parent, guardian ~~or,~~ legal custodian, ~~or Indian custodian.~~
9 The intake worker shall notify both the child and the child's parent, guardian ~~or,~~
10 legal custodian. ~~When, or Indian custodian.~~

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

19 **SECTION 26.** 48.207 (1g) of the statutes is created to read:

20 48.207 (1g) An Indian child held in physical custody under s. 48.205 (1) shall
21 be placed in compliance with s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless
22 the person responsible for determining the placement finds good cause, as described
23 in s. 48.028 (7) (e), for departing from the order of placement preference under s.
24 48.028 (7) (b) or finds that emergency conditions necessitate departing from that
25 order. When the reason for departing from that order is resolved, the Indian child

SENATE BILL 288

1 shall be placed in compliance with the order of placement preference under s. 48.028
2 (7) (b) or, if applicable, s. 48.028 (7) (c).

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

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

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

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

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

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

SENATE BILL 288**SECTION 29**

1 witnesses, and, in the case of a parent or Indian custodian of an Indian child who is
2 the subject of an Indian child custody proceeding under s. 48.028 (2) (d) 2., the right
3 to counsel under s. 48.028 (4) (b).

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

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

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

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

22 **SECTION 32.** 48.21 (5) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
23 28, is repealed.

24 **SECTION 33.** 48.21 (5) (d) 3. of the statutes, as affected by 2009 Wisconsin Act
25 28, is repealed.

SENATE BILL 288

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

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

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

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

18 **SECTION 36.** 48.23 (3) of the statutes is amended to read:

19 48.23 (3) **POWER OF THE COURT TO APPOINT COUNSEL.** Except in proceedings under
20 s. 48.13, at any time, upon request or on its own motion, the court may appoint
21 counsel for the child or any party, unless the child or the party has or wishes to retain
22 counsel of his or her own choosing. ~~The~~ Except as provided in sub. (2g), the court may
23 not appoint counsel for any party other than the child in a proceeding under s. 48.13.

24 **SECTION 37.** 48.23 (4) of the statutes is amended to read:

SENATE BILL 288

1 48.23 (4) PROVIDING COUNSEL. ~~In any situation under this section in which~~ If
2 a child has a right to be represented by counsel or is provided counsel at the discretion
3 of the court under this section and counsel is not knowingly and voluntarily waived,
4 the court shall refer the child to the state public defender and counsel shall be
5 appointed by the state public defender under s. 977.08 without a determination of
6 indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the
7 state public defender shall appoint counsel within 24 hours after that referral. Any
8 counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent
9 the child in any appeal brought under s. 809.105 unless the child requests
10 substitution of counsel or extenuating circumstances make it impossible for counsel
11 to continue to represent the child. In any situation under sub. (2), ~~(2g)~~, or (2m) in
12 which a parent 18 years of age or over or an adult expectant mother is entitled to
13 representation by counsel; counsel is not knowingly and voluntarily waived; and it
14 appears that the parent or adult expectant mother is unable to afford counsel in full,
15 or the parent or adult expectant mother so indicates; the court shall refer the parent
16 or adult expectant mother to the authority for indigency determinations specified
17 under s. 977.07 (1). In any other situation under this section in which a person has
18 a right to be represented by counsel or is provided counsel at the discretion of the
19 court, competent and independent counsel shall be provided and reimbursed in any
20 manner suitable to the court regardless of the person's ability to pay, except that the
21 court may not order a person who files a petition under s. 813.122 or 813.125 to
22 reimburse counsel for the child who is named as the respondent in that petition.

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

24 48.235 (4) (a) 7. Petition for relief from a judgment terminating parental rights
25 under s. 48.028 or 48.46.

SENATE BILL 288

1 **SECTION 39.** 48.235 (4m) (a) 7. of the statutes is amended to read:

2 48.235 (**4m**) (a) 7. Petition for relief from a judgment terminating parental
3 rights under s. 48.028 or 48.46 after the child is born.

4 **SECTION 40.** 48.255 (1) (cm) of the statutes is amended to read:

5 48.255 (**1**) (cm) Whether the child may be subject to the federal Indian child
6 welfare act Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the child may be
7 subject to that act, the names and addresses of the child's Indian custodian, if any,
8 and Indian tribe, if known.

9 **SECTION 41.** 48.255 (1) (g) of the statutes is created to read:

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

20 **SECTION 42.** 48.255 (1m) (d) of the statutes is amended to read:

21 48.255 (**1m**) (d) Whether the unborn child, when born, may be subject to the
22 federal Indian Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the unborn child
23 may be subject to that act, the name and address of the Indian tribe in which the
24 unborn child may be eligible for affiliation when born, if known.

25 **SECTION 43.** 48.255 (1m) (g) of the statutes is created to read:

SENATE BILL 288

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

11 **SECTION 44.** 48.255 (2) of the statutes is amended to read:

12 48.255 (2) If any of the facts required under sub. (1) (a) to (cm) ~~and~~, (f), and (g)
13 or (1m) (a) to (d) ~~and~~, (f), and (g) are not known or cannot be ascertained by the
14 petitioner, the petition shall so state.

15 **SECTION 45.** 48.255 (4) of the statutes is amended to read:

16 48.255 (4) A copy of a petition under sub. (1) shall be given to the child if the
17 child is 12 years of age or over and to the parents, guardian, legal custodian and
18 physical custodian. A copy of a petition under sub. (1m) shall be given to the child
19 expectant mother, if 12 years of age or over, her parents, guardian, legal custodian
20 and physical custodian and the unborn child by the unborn child's guardian ad litem
21 or to the adult expectant mother, the unborn child through the unborn child's
22 guardian ad litem and the physical custodian of the expectant mother, if any. ~~A If~~
23 the child is an Indian child who has been removed from the home of his or her parent
24 or Indian custodian or the unborn child will be an Indian child when born, a copy of
25 a petition under sub. (1) or (1m) shall also be given to the ~~tribe or band with which~~

SENATE BILL 288

1 ~~the child is affiliated or~~ Indian child's Indian custodian and tribe or the Indian tribe
2 with which the unborn child may be eligible for affiliation when born, ~~if the child is~~
3 ~~an Indian child or the unborn child may be an Indian child when born.~~

4 **SECTION 46.** 48.27 (3) (a) 1. of the statutes is amended to read:

5 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
6 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
7 who is a child, the court shall also notify, under s. 48.273, the child, any parent,
8 guardian, and legal custodian of the child, any foster parent, treatment foster parent,
9 or other physical custodian described in s. 48.62 (2) of the child, the unborn child by
10 the unborn child's guardian ad litem, if applicable, and any person specified in par.
11 (b), (d), or (e), if applicable, of all hearings involving the child except hearings on
12 motions for which notice ~~need only~~ must be provided only to the child and his or her
13 counsel. ~~When~~ If parents who are entitled to notice have the same place of residence,
14 notice to one shall ~~constitute~~ constitutes notice to the other. The first notice to any
15 interested party, foster parent, treatment foster parent, or other physical custodian
16 described in s. 48.62 (2) shall be ~~written~~ in writing and may have a copy of the petition
17 attached to it. ~~Thereafter, notice of~~ Notices of subsequent hearings may be given by
18 telephone at least 72 hours before the time of the hearing. The person giving
19 telephone notice shall place in the case file a signed statement of the time notice was
20 given and the person to whom he or she spoke.

21 **SECTION 47.** 48.27 (3) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts
22 28 and (this act), is repealed and recreated to read:

23 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a
24 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother
25 who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian,

SENATE BILL 288

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

13 **SECTION 48.** 48.27 (3) (d) of the statutes is amended to read:

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

22 **SECTION 49.** 48.27 (4) (a) 2. of the statutes is amended to read:

23 48.27 (4) (a) 2. Advise the child and any party, if applicable, of his or her right
24 to legal counsel regardless of ability to pay.

SENATE BILL 288

1 **SECTION 50.** 48.273 (1) of the statutes is renumbered 48.273 (1) (a) and
2 amended to read:

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

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

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

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

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

24 **SECTION 51.** 48.273 (1) (ag) of the statutes is created to read:

SENATE BILL 288

1 48.273 (1) (ag) In a situation described in s. 48.27 (3) (d) involving an Indian
2 child, service of summons or notice required by s. 48.27 to the Indian child’s parent,
3 Indian custodian, or tribe shall be made as provided in s. 48.028 (4) (a).

4 **SECTION 52.** 48.273 (1) (c) 2. of the statutes is created to read:

5 48.273 (1) (c) 2. When a petition under s. 48.13 or 48.133 involves an Indian
6 child who has been removed from the home of his or her parent or Indian custodian
7 and the person to be notified is the Indian child’s parent, Indian custodian, or tribe,
8 the mail shall be sent so that it is received by the person to be notified at least 10 days
9 before the hearing or, if the identity or location of the person to be notified cannot be
10 determined, by the U.S. secretary of the interior at least 10 days before the hearing.

11 **SECTION 53.** 48.299 (6) (d) of the statutes is amended to read:

12 48.299 (6) (d) The court may stay the proceedings under this chapter pending
13 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
14 determines that the paternity proceedings will not unduly delay the proceedings
15 under this chapter and the determination of paternity is necessary to the court’s
16 disposition of the child if the child is found to be in need of protection or services or
17 if the court determines or has reason to know that the paternity proceedings may
18 result in a finding that the child is an Indian child and in a petition by the child’s
19 parent, Indian custodian, or tribe for transfer of the proceeding to the jurisdiction of
20 the tribe.

21 **SECTION 54.** 48.299 (9) of the statutes is created to read:

22 48.299 (9) If at any point in the proceeding the court determines or has reason
23 to know that the child is an Indian child, the court shall provide notice of the
24 proceeding to the child’s parent, Indian custodian, and tribe in the manner specified
25 in s. 48.028 (4) (a). The next hearing in the proceeding may not be held until at least

SENATE BILL 288

1 10 days after receipt of the notice by the parent, Indian custodian, and tribe or, if the
2 identity or location of the parent, Indian custodian, expectant mother, or tribe cannot
3 be determined, until at least 10 days after receipt of the notice by the U.S. secretary
4 of the interior. On request of the parent, Indian custodian, or tribe, the court shall
5 grant a continuance of up to 20 additional days to enable the requester to prepare
6 for that hearing.

7 **SECTION 55.** 48.30 (1) of the statutes is amended to read:

8 48.30 (1) Except as provided in ~~this subsection s. 48.299 (9)~~, the hearing to
9 determine whether any party wishes to contest an allegation that the child or unborn
10 child is in need of protection or services shall take place on a date which allows
11 reasonable time for the parties to prepare but is within 30 days after the filing of a
12 petition for a child or an expectant mother who is not being held in secure custody
13 or within 10 days after the filing of a petition for a child who is being held in secure
14 custody.

15 **SECTION 56.** 48.30 (2) of the statutes is amended to read:

16 48.30 (2) At the commencement of the hearing under this section the child and
17 the parent, guardian ~~or~~, legal custodian, or Indian custodian; the child expectant
18 mother, her parent, guardian ~~or~~, legal custodian, or Indian custodian, and the unborn
19 child through the unborn child's guardian ad litem; or the adult expectant mother
20 and the unborn child through the unborn child's guardian ad litem; shall be advised
21 of their rights as specified in s. 48.243 and shall be informed that a request for a jury
22 trial or for a substitution of judge under s. 48.29 must be made before the end of the
23 plea hearing or ~~be~~ is waived. Nonpetitioning parties, including the child, shall be
24 granted a continuance of the plea hearing if they wish to consult with an attorney
25 on the request for a jury trial or substitution of a judge.

SENATE BILL 288

1 **SECTION 57.** 48.30 (6) (a) of the statutes is amended to read:

2 48.30 (6) (a) If a petition is not contested, the court, subject to s. 48.299 (9), shall
3 set a date for the dispositional hearing which allows reasonable time for the parties
4 to prepare but is no more than 10 days after the plea hearing for a child who is held
5 in 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. If Subject to s. 48.299 (9), if all
7 parties consent, the court may proceed immediately with the dispositional hearing.

8 **SECTION 58.** 48.30 (7) of the statutes is amended to read:

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

14 **SECTION 59.** 48.305 of the statutes is amended to read:

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

SENATE BILL 288

1 **SECTION 60.** 48.31 (1) of the statutes is amended to read:

2 48.31 (1) In this section, “fact-finding hearing” means a hearing to determine
3 if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate
4 parental rights are proved by clear and convincing evidence. In the case of a petition
5 to terminate parental rights to an Indian child, “fact-finding hearing” means a
6 hearing to determine if the allegations in the petition, other than the allegations
7 under s. 48.42 (1) (e) relating to serious emotional or physical damage, are proved by
8 clear and convincing evidence and if the allegations under s. 48.42 (1) (e) relating to
9 serious emotional or physical damage are proved beyond a reasonable doubt as
10 provided in s. 48.028 (4) (e) 1.

11 **SECTION 61.** 48.31 (5) of the statutes is created to read:

12 48.31 (5) If the child is an Indian child, the court or jury shall also determine
13 at the fact-finding hearing whether continued custody of the Indian child by the
14 Indian child’s parent or Indian custodian is likely to result in serious emotional or
15 physical damage to the Indian child under s. 48.028 (4) (d) 1. and whether active
16 efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian
17 child’s family and whether those efforts have proved unsuccessful, unless partial
18 summary judgment on the allegations under s. 48.13 or 48.133 is granted, in which
19 case the court shall make those determinations at the dispositional hearing.

20 **SECTION 62.** 48.31 (7) (a) of the statutes is amended to read:

21 48.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
22 48.299 (9), shall set a date for the dispositional hearing which allows a reasonable
23 time for the parties to prepare but is no more than 10 days after the fact-finding
24 hearing for a child in secure custody and no more than 30 days after the fact-finding
25 hearing for a child or expectant mother who is not held in secure custody. If Subject

SENATE BILL 288

1 to s. 48.299 (9), if all parties consent, the court may immediately proceed with a
2 dispositional hearing.

3 **SECTION 63.** 48.315 (1) (j) of the statutes is created to read:

4 48.315 (1) (j) A reasonable period of delay, not to exceed 20 days, in a proceeding
5 involving the out-of-home care placement of or termination of parental rights to a
6 child whom the court knows or has reason to know is an Indian child, resulting from
7 a continuance granted at the request of the child's parent, Indian custodian, or tribe
8 to enable the requester to prepare for the proceeding.

9 **SECTION 64.** 48.315 (1m) of the statutes is amended to read:

10 48.315 (1m) Subsection (1) (a), (d), (e) ~~and, (fm), (g), and (j)~~ does not apply to
11 proceedings under s. 48.375 (7).

12 **SECTION 65.** 48.32 (1) (c) 1. of the statutes is renumbered 48.32 (1) (c) and
13 amended to read:

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

21 **SECTION 66.** 48.32 (1) (c) 2. of the statutes, as affected by 2009 Wisconsin Act
22 28, is repealed.

23 **SECTION 67.** 48.32 (1) (c) 3. of the statutes, as affected by 2009 Wisconsin Act
24 28, is repealed.

25 **SECTION 68.** 48.32 (1) (d) of the statutes is created to read:

SENATE BILL 288

1 48.32 (1) (d) 1. In the case of an Indian child, if at the time the consent decree
2 is entered into the Indian child is placed outside the home of his or her parent or
3 Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living
4 outside that home without a court order and if the consent decree maintains the
5 Indian child in that placement or other living arrangement, the consent decree shall
6 include a finding supported by clear and convincing evidence, including the
7 testimony of one or more qualified expert witnesses, that continued custody of the
8 Indian child by the parent or Indian custodian is likely to result in serious emotional
9 or physical damage to the child under s. 48.028 (4) (d) 1. and a finding that active
10 efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian
11 child's family and that those efforts have proved unsuccessful. The findings under
12 this subdivision shall be in addition to the findings under par. (b) 1., except that for
13 the sole purpose of determining whether the cost of providing care for an Indian child
14 is eligible for reimbursement under 42 USC 670 to 679b, the findings under this
15 subdivision and the findings under par. (b) 1. shall be considered to be the same
16 findings.

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

21 **SECTION 69.** 48.33 (4) (d) of the statutes is created to read:

22 48.33 (4) (d) If the agency knows or has reason to know that the child is an
23 Indian child who is being removed from the home of his or her parent or Indian
24 custodian, a description of any efforts undertaken to determine whether the child is
25 an Indian child; specific information showing that continued custody of the child by

SENATE BILL 288

1 the parent or Indian custodian is likely to result in serious emotional or physical
2 damage to the child under s. 48.028 (4) (d) 1.; specific information showing that active
3 efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian
4 child's family and that those efforts have proved unsuccessful; a statement as to
5 whether the out-of-home care placement recommended is in compliance with the
6 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c);
7 and, if the recommended placement is not in compliance with that order, specific
8 information showing good cause, as described in s. 48.028 (7) (e), for departing from
9 that order.

10 **SECTION 70.** 48.335 (3j) of the statutes is created to read:

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

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

20 (b) That active efforts under s. 48.028 (4) (d) 2. have been made to prevent the
21 breakup of the Indian child's family and that those efforts have proved unsuccessful.

22 (c) That the placement recommended is in compliance with the order of
23 placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c) or, if that
24 placement is not in compliance with that order, good cause, as described in s. 48.028
25 (7) (e), for departing from that order.

SENATE BILL 288

1 **SECTION 71.** 48.335 (3j) (intro.) of the statutes, as created by 2009 Wisconsin
2 Act (this act), is amended to read:

3 48.335 **(3j)** (intro.) At hearings under this section involving an Indian child, if
4 the agency, as defined in s. 48.38 (1) (a), is recommending removal of the Indian child
5 from the home of his or her parent or Indian custodian and placement of the Indian
6 child in a foster home, ~~treatment foster home~~, group home, or residential care center
7 for children and youth or in the home of a relative other than a parent, the agency
8 shall present as evidence specific information showing all of the following:

9 **SECTION 72.** 48.345 (3) (intro.) of the statutes is amended to read:

10 48.345 **(3)** (intro.) ~~Designate~~ Subject to sub. (3m), designate one of the following
11 as the placement for the child:

12 **SECTION 73.** 48.345 (3m) of the statutes is created to read:

13 48.345 **(3m)** Subject to s. 48.028 (7) (c), if the child is an Indian child who is
14 being removed from the home of his or her parent or Indian custodian and placed
15 outside of that home, designate one of the placements listed in s. 48.028 (7) (b) 1. to
16 4. as the placement for the Indian child, in the order of preference listed, unless the
17 court finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

18 **SECTION 74.** 48.355 (2) (b) 6v. of the statutes is created to read:

19 48.355 **(2)** (b) 6v. If the child is an Indian child who is being removed from the
20 home of his or her parent or Indian custodian and placed outside that home, a finding
21 supported by clear and convincing evidence, including the testimony of one or more
22 qualified expert witnesses, that continued custody of the Indian child by the parent
23 or Indian custodian is likely to result in serious emotional or physical damage to the
24 child under s. 48.028 (4) (d) 1. and a finding 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

SENATE BILL 288**SECTION 74**

1 efforts have proved unsuccessful. The findings under this subdivision shall be in
2 addition to the findings under subd. 6., except that for the sole purpose of
3 determining whether the cost of providing care for an Indian child is eligible for
4 reimbursement under 42 USC 670 to 679b, the findings under this subdivision and
5 the findings under subd. 6. shall be considered to be the same findings. The findings
6 under this subdivision are not required if they were made in a previous order in the
7 proceeding unless a change in circumstances warrants new findings.

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

9 48.355 (2) (d) The court shall provide a copy of a dispositional order relating
10 to a child in need of protection or services to the child's parent, guardian, legal
11 custodian, or trustee, to the child through the child's counsel or guardian ad litem
12 and, to the child's court-appointed special advocate, and, if the child is an Indian
13 child who has been removed from the home of his or her parent or Indian custodian
14 and placed outside that home, to the Indian child's Indian custodian and tribe. The
15 court shall provide a copy of a dispositional order relating to an unborn child in need
16 of protection or services to the expectant mother, to the unborn child through the
17 unborn child's guardian ad litem and, if the expectant mother is a child, to her, to the
18 parent, guardian, legal custodian, or trustee of a child expectant mother and, if the
19 expectant mother is an Indian child, to the expectant mother's Indian custodian and
20 tribe.

21 **SECTION 76.** 48.355 (2d) (c) 1. of the statutes is renumbered 48.355 (2d) (c) and
22 amended to read:

23 48.355 (2d) (c) If the court finds that any of the circumstances specified in
24 under par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing
25 under s. 48.38 (4m) within 30 days after the date of that finding to determine the

SENATE BILL 288

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

4 **SECTION 77.** 48.355 (2d) (c) 2. of the statutes, as affected by 2009 Wisconsin Act
5 28, is repealed.

6 **SECTION 78.** 48.355 (2d) (c) 3. of the statutes, as affected by 2009 Wisconsin Act
7 28, is repealed.

8 **SECTION 79.** 48.355 (2d) (d) of the statutes is created to read:

9 48.355 **(2d)** (d) This subsection does not affect the requirement under sub. (2)
10 (b) 6v. that the court include in a dispositional order removing an Indian child from
11 the home of his or her parent or Indian custodian and placing the child outside that
12 home a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent
13 the breakup of the Indian child's family and that those efforts have proved
14 unsuccessful.

15 **SECTION 80.** 48.357 (1) (am) 1. of the statutes is amended to read:

16 48.357 **(1)** (am) 1. If the proposed change in placement involves any change in
17 placement other than a change in placement specified in par. (c), the person or agency
18 primarily responsible for implementing the dispositional order, the district attorney,
19 or the corporation counsel shall cause written notice of the proposed change in
20 placement to be sent to the child, the parent, guardian, and legal custodian of the
21 child, any foster parent, treatment foster parent, or other physical custodian
22 described in s. 48.62 (2) of the child, the child's court-appointed special advocate,
23 and, if the child is an Indian child who has been removed from the home of his or her
24 parent or Indian custodian, the Indian child's Indian custodian and tribe. If the child
25 is the expectant mother of an unborn child under s. 48.133, written notice shall also

SENATE BILL 288

1 be sent to the unborn child by the unborn child’s guardian ad litem. If the change
2 in placement involves an adult expectant mother is an adult of an unborn child under
3 s. 48.133, written notice shall be sent to the adult expectant mother and the unborn
4 child by the unborn child’s guardian ad litem. The notice shall contain the name and
5 address of the new placement, the reasons for the change in placement, a statement
6 describing why the new placement is preferable to the present placement, and a
7 statement of how the new placement satisfies objectives of the treatment plan
8 ordered by the court.

9 **SECTION 81.** 48.357 (1) (am) 1. of the statutes, as affected by 2009 Wisconsin
10 Acts 28 and (this act), is repealed and recreated to read:

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

SENATE BILL 288

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

3 **SECTION 82.** 48.357 (1) (am) 1g. of the statutes is created to read:

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

12 **SECTION 83.** 48.357 (1) (am) 2. of the statutes is renumbered 48.357 (1) (am)
13 2. (intro.) and amended to read:

14 48.357 (1) (am) 2. (intro.) Any person receiving the notice under subd. 1. or
15 notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed
16 special advocate, may obtain a hearing on the matter by filing an objection with the
17 court within 10 days after receipt of the notice. Placements Except as provided in
18 subd. 2m., placements may not be changed until 10 days after that notice is sent to
19 the court unless written waivers of objection are signed as follows:

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

23 b. By the child expectant mother, if 12 years of age or over, her parent, guardian,
24 or legal custodian and, or Indian custodian, the unborn child by the unborn child's

SENATE BILL 288**SECTION 83**

1 guardian ad litem, ~~or~~ and the child expectant mother's tribe, if she is an Indian child
2 who has been removed from the home of his or her parent or Indian custodian.

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

5 2m. Changes in placement that were authorized in the dispositional order may
6 be made immediately if notice is given as required under subd. 1. In addition, a
7 hearing is not required for placement changes authorized in the dispositional order
8 except when an objection filed by a person who received notice alleges that new
9 information is available that affects the advisability of the court's dispositional order.

10 **SECTION 84.** 48.357 (1) (am) 3. of the statutes is amended to read:

11 48.357 (1) (am) 3. If the court changes the child's placement from a placement
12 outside the home to another placement outside the home, the change in placement
13 order shall contain the applicable order ~~specified in~~ under sub. (2v) (a) 1m. and the
14 applicable statement ~~specified in~~ under sub. (2v) (a) 2. If the court changes the
15 placement of an Indian child who has been removed from the home of his or her
16 parent or Indian custodian from a placement outside that home to another placement
17 outside that home, the change in placement order shall, in addition, comply with the
18 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c),
19 unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from
20 that order.

21 **SECTION 85.** 48.357 (1) (c) 1m. of the statutes is created to read:

22 48.357 (1) (c) 1m. If the child is an Indian child and if the proposed change in
23 placement would change the placement of the child from a placement in the home of
24 his or her parent or Indian custodian to a placement outside that home, a request
25 under subd. 1. shall also contain specific information showing that continued custody

SENATE BILL 288

1 of the Indian child by the parent or Indian custodian is likely to result in serious
2 emotional or physical damage to the child under s. 48.028 (4) (d) 1., specific
3 information showing that active efforts under s. 48.028 (4) (d) 2. have been made to
4 prevent the breakup of the Indian child's family and that those efforts have proved
5 unsuccessful, a statement as to whether the new placement is in compliance with the
6 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c)
7 and, if the new placement is not in compliance with that order, specific information
8 showing good cause, as described in s. 48.028 (7) (e), for departing from that order.

9 **SECTION 86.** 48.357 (1) (c) 2. of the statutes is amended to read:

10 48.357 (1) (c) 2. The court shall hold a hearing prior to ordering any change in
11 placement requested under subd. 1. Not less than 3 days prior to the hearing, the
12 court shall provide notice of the hearing, together with a copy of the request for the
13 change in placement, to the child, the parent, guardian, and legal custodian of the
14 child, the child's court-appointed special advocate, and all parties that are bound by
15 the dispositional order. If, and, if the child is an Indian child, the Indian child's
16 Indian custodian and tribe. Subject to subd. 2m., if all parties consent, the court may
17 proceed immediately with the hearing.

18 **SECTION 87.** 48.357 (1) (c) 2m. of the statutes is created to read:

19 48.357 (1) (c) 2m. If the child is an Indian child and if the proposed change in
20 placement would change the placement of the child from a placement in the home of
21 his or her parent or Indian custodian to a placement outside that home, notice under
22 subd. 2. to the Indian child's parent, Indian custodian, and tribe shall be provided
23 in the manner specified in s. 48.028 (4) (a). No hearing on the request may be held
24 until at least 10 days after receipt of the notice by the Indian child's parent, Indian
25 custodian, and tribe or, if the identity or location of the Indian child's parent, Indian

SENATE BILL 288

1 custodian, or tribe cannot be determined, until at least 10 days after receipt of the
2 notice by the U.S. secretary of the interior. On request of the Indian child's parent,
3 Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional
4 days to enable the requester to prepare for the hearing.

5 **SECTION 88.** 48.357 (1) (c) 3. of the statutes is amended to read:

6 48.357 (1) (c) 3. If the court changes the child's placement from a placement in
7 the child's home to a placement outside the child's home, the change in placement
8 order shall contain the findings ~~specified in under~~ sub. (2v) (a) 1., the applicable order
9 ~~specified in under~~ sub. (2v) (a) 1m., the applicable statement ~~specified in under~~ sub.
10 (2v) (a) 2., and, if in addition the court finds that any of the circumstances ~~specified~~
11 ~~in under~~ s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination
12 ~~specified in under~~ sub. (2v) (a) 3. If the court changes the placement of an Indian
13 child from a placement in the home of his or her parent or Indian custodian to a
14 placement outside that home, the change in placement order shall, in addition,
15 contain the findings under sub. (2v) (a) 4. and comply with the order of placement
16 preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court
17 finds good cause, as described in s. 48.028 (7) (e), for departing from the order.

18 **SECTION 89.** 48.357 (2m) (a) of the statutes is amended to read:

19 48.357 (2m) (a) The child, the parent, guardian, ~~or~~ legal custodian, or Indian
20 custodian of the child, the expectant mother, the unborn child by the unborn child's
21 guardian ad litem, or any person or agency primarily bound by the dispositional
22 order, other than the person or agency responsible for implementing the order, may
23 request a change in placement under this paragraph. The request shall contain the
24 name and address of the new placement requested and shall state what new
25 information is available that affects the advisability of the current placement. If the

SENATE BILL 288

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

11 **SECTION 90.** 48.357 (2m) (am) of the statutes is created to read:

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

24 2. If the proposed change in placement would change the placement of an
25 Indian child placed outside the home of his or her parent or Indian custodian to

SENATE BILL 288**SECTION 90**

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

6 **SECTION 91.** 48.357 (2m) (b) of the statutes is amended to read:

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

SENATE BILL 288

1 by the dispositional order, at least 3 days prior to the hearing. A copy of the request
2 or proposal for the change in placement shall be attached to the notice. If Subject to
3 par. (bm), if all of the parties consent, the court may proceed immediately with the
4 hearing.

5 **SECTION 92.** 48.357 (2m) (b) of the statutes, as affected by 2009 Wisconsin Acts
6 28 and (this act), is repealed and recreated to read:

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

SENATE BILL 288

1 be attached to the notice. Subject to par. (bm), if all of the parties consent, the court
2 may proceed immediately with the hearing.

3 **SECTION 93.** 48.357 (2m) (bm) of the statutes is created to read:

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

16 **SECTION 94.** 48.357 (2m) (c) of the statutes is renumbered 48.357 (2m) (c) 1. and
17 amended to read:

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

SENATE BILL 288

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

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

14 **SECTION 95.** 48.357 (2v) (a) 4. of the statutes is created to read:

15 48.357 (2v) (a) 4. If the change in placement order changes an Indian child's
16 placement from a placement in the home of his or her parent or Indian custodian to
17 a placement outside that home, a finding supported by clear and convincing
18 evidence, including the testimony of one or more qualified expert witnesses, that
19 continued custody of the Indian child by the parent or Indian custodian is likely to
20 result in serious emotional or physical damage to the child under s. 48.028 (4) (d) 1.
21 and a finding that active efforts under s. 48.028 (4) (d) 2. have been made to prevent
22 the breakup of the Indian child's family and that those efforts have proved
23 unsuccessful. The findings under this subdivision shall be in addition to the findings
24 under subd. 1., except that for the sole purpose of determining whether the cost of
25 providing care for an Indian child is eligible for reimbursement under 42 USC 670

SENATE BILL 288

1 to 679b, the findings under this subdivision and the findings under subd. 1. shall be
2 considered to be the same findings. The findings under this subdivision are not
3 required if they were made in a previous order in the proceeding unless a change in
4 circumstances warrants new findings.

5 **SECTION 96.** 48.357 (2v) (c) 1. of the statutes is renumbered 48.357 (2v) (c) and
6 amended to read:

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

13 **SECTION 97.** 48.357 (2v) (c) 2. of the statutes, as affected by 2009 Wisconsin Act
14 28, is repealed.

15 **SECTION 98.** 48.357 (2v) (c) 3. of the statutes, as affected by 2009 Wisconsin Act
16 28, is repealed.

17 **SECTION 99.** 48.363 (1) (a) of the statutes is amended to read:

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

SENATE BILL 288

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

8 **SECTION 100.** 48.363 (1) (b) of the statutes is amended to read:

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

SENATE BILL 288

1 **SECTION 101.** 48.363 (1) (b) of the statutes, as affected by 2009 Wisconsin Acts
2 28 and (this act), is repealed and recreated to read:

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

20 **SECTION 102.** 48.365 (1m) of the statutes is amended to read:

21 48.365 (1m) The parent, child, guardian, legal custodian, Indian custodian,
22 expectant mother, unborn child by the unborn child’s guardian ad litem, any person
23 or agency bound by the dispositional order, the district attorney or corporation
24 counsel in the county in which the dispositional order was entered, or the court on
25 its own motion, may request an extension of an order under s. 48.355 including an

SENATE BILL 288

1 order under s. 48.355 that was entered before the child was born. The request shall
2 be submitted to the court ~~which~~ that entered the order. ~~No~~ An order under s. 48.355
3 may be extended ~~except~~ only as provided in this section.

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

5 48.365 (2) No order may be extended without a hearing. The court shall ~~notify~~
6 provide notice of the time and place of the hearing to the child, the child's parent,
7 guardian ~~and~~, legal custodian, and Indian custodian, all the parties present at the
8 original hearing, the child's foster parent, treatment foster parent, or other physical
9 custodian described in s. 48.62 (2), the child's court-appointed special advocate, the
10 district attorney or corporation counsel in the county in which the dispositional order
11 was entered and, if the child is an Indian child who is placed outside the home of his
12 or her parent or Indian custodian, the Indian child's tribe. If the child is an expectant
13 mother of an unborn child under s. 48.133, the court shall also notify the unborn child
14 by the unborn child's guardian ad litem, ~~or.~~ If the extension hearing involves an adult
15 expectant mother of an unborn child under s. 48.133, the court shall notify the adult
16 expectant mother, the unborn child through the unborn child's guardian ad litem, all
17 the parties present at the original hearing, and the district attorney or corporation
18 counsel in the county in which the dispositional order was entered, of the time and
19 place of the hearing.

20 **SECTION 104.** 48.365 (2) of the statutes, as affected by 2009 Wisconsin Acts 28
21 and ... (this act), is repealed and recreated to read:

22 48.365 (2) No order may be extended without a hearing. The court shall
23 provide notice of the time and place of the hearing to the child, the child's parent,
24 guardian, legal custodian, and Indian custodian, all the parties present at the
25 original hearing, the child's foster parent or other physical custodian described in s.

SENATE BILL 288

1 48.62 (2), the child’s court-appointed special advocate, the district attorney or
2 corporation counsel in the county in which the dispositional order was entered and,
3 if the child is an Indian child who is placed outside the home of his or her parent or
4 Indian custodian, the Indian child’s tribe. If the child is an expectant mother of an
5 unborn child under s. 48.133, the court shall also notify the unborn child by the
6 unborn child’s guardian ad litem. If the extension hearing involves an adult
7 expectant mother of an unborn child under s. 48.133, the court shall notify the adult
8 expectant mother, the unborn child through the unborn child’s guardian ad litem, all
9 the parties present at the original hearing, and the district attorney or corporation
10 counsel in the county in which the dispositional order was entered, of the time and
11 place of the hearing.

12 **SECTION 105.** 48.365 (2g) (b) 4. of the statutes is created to read:

13 48.365 (2g) (b) 4. If the child is an Indian child who is placed outside the home
14 of his or her parent or Indian custodian, specific information showing that active
15 efforts under s. 48.028 (4) (d) 2. have been made to prevent the breakup of the Indian
16 child’s family and that those efforts have proved unsuccessful.

17 **SECTION 106.** 48.365 (2m) (a) 1. of the statutes is amended to read:

18 48.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
19 extension. If the child is placed outside of his or her home, the person or agency
20 primarily responsible for providing services to the child shall present as evidence
21 specific information showing that the person or agency has made reasonable efforts
22 to achieve the goal of the child’s permanency plan, unless return of the child to the
23 home is the goal of the permanency plan and any of the circumstances specified in
24 under s. 48.355 (2d) (b) 1. to 5. applies. If an Indian child is placed outside the home
25 of his or her parent or Indian custodian, the person or agency primarily responsible

SENATE BILL 288

1 for providing services to the Indian child shall also present as evidence specific
2 information showing that active efforts under s. 48.028 (4) (d) 2. have been made to
3 prevent the breakup of the Indian child's family and that those efforts have proved
4 unsuccessful.

5 1m. The judge shall make findings of fact and conclusions of law based on the
6 evidence. The findings of fact shall include a finding as to whether reasonable efforts
7 were made by the agency primarily responsible for providing services to the child to
8 achieve the goal of the child's permanency plan, unless return of the child to the home
9 is the goal of the permanency plan and the judge finds that any of the circumstances
10 specified in under s. 48.355 (2d) (b) 1. to 5. applies. If the child is an Indian child who
11 is placed outside the home of his or her parent or Indian custodian, the findings of
12 fact shall also include a finding that active efforts under s. 48.028 (4) (d) 2. were made
13 to prevent the breakup of the Indian child's family and that those efforts have proved
14 unsuccessful. An order shall be issued under s. 48.355.

15 **SECTION 107.** 48.365 (2m) (a) 3. of the statutes is amended to read:

16 48.365 **(2m)** (a) 3. The judge shall make the findings ~~specified in~~ under subd.
17 ~~1.~~ 1m. relating to reasonable efforts to achieve the goal of the child's permanency plan
18 and the findings ~~specified in~~ under subd. 2. on a case-by-case basis based on
19 circumstances specific to the child and shall document or reference the specific
20 information on which those findings are based in the order issued under s. 48.355.
21 An order that merely references subd. ~~1.~~ 1m. or 2. without documenting or
22 referencing that specific information in the order or an amended order that
23 retroactively corrects an earlier order that does not comply with this subdivision is
24 not sufficient to comply with this subdivision.

SENATE BILL 288

1 **SECTION 108.** 48.365 (2m) (ad) 1. of the statutes is renumbered 48.365 (2m) (ad)
2 and amended to read:

3 48.365 **(2m)** (ad) If the judge finds that any of the circumstances ~~specified in~~
4 under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold
5 a hearing under s. 48.38 (4m) within 30 days after the date of that finding to
6 determine the permanency plan for the child. ~~If a hearing is held under this~~
7 ~~subdivision, the agency responsible for preparing the permanency plan shall file the~~
8 ~~permanency plan with the court not less than 5 days before the date of the hearing.~~

9 **SECTION 109.** 48.365 (2m) (ad) 2. of the statutes, as affected by 2009 Wisconsin
10 Act 28, is repealed.

11 **SECTION 110.** 48.365 (2m) (ag) of the statutes is amended to read:

12 48.365 **(2m)** (ag) The court shall give a foster parent, treatment foster parent,
13 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
14 ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the
15 foster parent, treatment foster parent, or other physical custodian to make a written
16 or oral statement during the hearing, or to submit a written statement prior to the
17 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
18 or other physical custodian ~~described in s. 48.62 (2)~~ who receives notice of a hearing
19 under ~~par. (ad) 2. or sub. (2)~~ and an opportunity to be heard under this paragraph
20 does not become a party to the proceeding on which the hearing is held solely on the
21 basis of receiving that notice and having the opportunity to be heard.

22 **SECTION 111.** 48.365 (2m) (ag) of the statutes, as affected by 2009 Wisconsin
23 Acts 28 and (this act), is repealed and recreated to read:

24 48.365 **(2m)** (ag) The court shall give a foster parent or other physical custodian
25 described in s. 48.62 (2) who is notified of a hearing under sub. (2) an opportunity to

SENATE BILL 288

1 be heard at the hearing by permitting the foster parent or other physical custodian
2 to make a written or oral statement during the hearing, or to submit a written
3 statement prior to the hearing, relevant to the issue of extension. A foster parent or
4 other physical custodian who receives notice of a hearing under sub. (2) and an
5 opportunity to be heard under this paragraph does not become a party to the
6 proceeding on which the hearing is held solely on the basis of receiving that notice
7 and having the opportunity to be heard.

8 **SECTION 112.** 48.38 (4) (i) of the statutes is created to read:

9 48.38 (4) (i) If the child is an Indian child who is placed outside the home of his
10 or her parent or Indian custodian, all of the following:

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

13 2. A description of the remedial services and rehabilitation programs offered
14 under s. 48.028 (4) (d) 2. in an effort to prevent the breakup of the Indian child's
15 family.

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

21 **SECTION 113.** 48.38 (4m) of the statutes is created to read:

22 48.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding
23 under s. 48.21, 48.32, 48.355, 48.357, or 48.365 the court finds that any of the
24 circumstances under s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the
25 court shall hold a hearing within 30 days after the date of that finding to determine

SENATE BILL 288

1 the permanency plan for the child. If a hearing is held under this paragraph, the
2 agency responsible for preparing the permanency plan shall file the permanency
3 plan with the court not less than 5 days before the hearing.

4 (b) At least 10 days before the hearing the court shall notify the child, any
5 parent, guardian, and legal custodian of the child, any foster parent, treatment foster
6 parent, or other physical custodian described in s. 48.62 (2) of the child and, if the
7 child is an Indian child, the Indian child's Indian custodian and tribe of the time,
8 place, and purpose of the hearing.

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

17 **SECTION 114.** 48.38 (4m) (b) and (c) of the statutes, as created by 2009
18 Wisconsin Act (this act), are amended to read:

19 48.38 **(4m)** (b) At least 10 days before the hearing the court shall notify the
20 child, any parent, guardian, and legal custodian of the child, any foster parent,
21 ~~treatment foster parent~~, or other physical custodian described in s. 48.62 (2) of the
22 child and, if the child is an Indian child, the Indian child's Indian custodian and tribe
23 of the time, place, and purpose of the hearing.

24 (c) The court shall give a foster parent, ~~treatment foster parent~~, or other
25 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)

SENATE BILL 288

1 a right to be heard at the hearing by permitting the foster parent, ~~treatment foster~~
2 ~~parent~~, or other physical custodian to make a written or oral statement during the
3 hearing, or to submit a written statement prior to the hearing, relevant to the issues
4 to be determined at the hearing. The foster parent, ~~treatment foster parent~~, or other
5 physical custodian does not become a party to the proceeding on which the hearing
6 is held solely on the basis of receiving that notice and right to be heard.

7 **SECTION 115.** 48.38 (5) (b) of the statutes is amended to read:

8 48.38 (5) (b) The court or the agency shall notify ~~the parents of the child, the~~
9 ~~child, if he or she is 12 years of age or older, and; the child's parent, guardian, and~~
10 ~~legal custodian;~~ the child's foster parent, the child's treatment foster parent, the
11 operator of the facility in which the child is living, or the relative with whom the child
12 is living; ~~and, if the child is an Indian child who is placed outside the home of his or~~
13 ~~her parent or Indian custodian, the Indian child's Indian custodian and tribe~~ of the
14 date, time, and place of the review, of the issues to be determined as part of the review,
15 and of the fact that they may have an opportunity to be heard at the review by
16 submitting written comments not less than 10 working days before the review or by
17 participating at the review. The court or agency shall notify the person representing
18 the interests of the public, the child's counsel, the child's guardian ad litem, and the
19 child's court-appointed special advocate of the date of the review, of the issues to be
20 determined as part of the review, and of the fact that they may submit written
21 comments not less than 10 working days before the review. The notices under this
22 paragraph shall be provided in writing not less than 30 days before the review and
23 copies of the notices shall be filed in the child's case record.

24 **SECTION 116.** 48.38 (5) (b) of the statutes, as affected by 2009 Wisconsin Acts
25 28 and (this act), is repealed and recreated to read:

SENATE BILL 288

1 48.38 (5) (b) The court or the agency shall notify the child, if he or she is 12 years
2 of age or older; the child’s parent, guardian, and legal custodian; the child’s foster
3 parent, the operator of the facility in which the child is living, or the relative with
4 whom the child is living; and, if the child is an Indian child who is placed outside the
5 home of his or her parent or Indian custodian, the Indian child’s Indian custodian and
6 tribe of the date, time, and place of the review, of the issues to be determined as part
7 of the review, and of the fact that they may have an opportunity to be heard at the
8 review by submitting written comments not less than 10 working days before the
9 review or by participating at the review. The court or agency shall notify the person
10 representing the interests of the public, the child’s counsel, the child’s guardian ad
11 litem, and the child’s court–appointed special advocate of the date of the review, of
12 the issues to be determined as part of the review, and of the fact that they may submit
13 written comments not less than 10 working days before the review. The notices
14 under this paragraph shall be provided in writing not less than 30 days before the
15 review and copies of the notices shall be filed in the child’s case record.

16 **SECTION 117.** 48.38 (5) (c) 8. of the statutes is created to read:

17 48.38 (5) (c) 8. If the child is an Indian child who is placed outside the home of
18 his or her parent or Indian custodian, whether active efforts under s. 48.028 (4) (d)
19 2. were made to prevent the breakup of the Indian child’s family, whether those
20 efforts have proved unsuccessful, whether the Indian child’s placement is in
21 compliance with the order of placement preference under s. 48.028 (7) (b) or, if
22 applicable, s. 48.028 (7) (c), and, if the placement is not in compliance with that order,
23 whether there is good cause, as described in s. 48.028 (7) (e), for departing from that
24 order.

25 **SECTION 118.** 48.38 (5) (d) of the statutes is amended to read:

SENATE BILL 288

1 48.38 (5) (d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the
2 permanency plan shall, at least 5 days before a review by a review panel, provide to
3 each person appointed to the review panel, the child's parent, guardian, and legal
4 custodian, the person representing the interests of the public, the child's counsel, the
5 child's guardian ad litem ~~and~~, the child's court-appointed special advocate, and, if
6 the child is an Indian child who is placed outside the home of his or her parent or
7 Indian custodian, the Indian child's Indian custodian and tribe a copy of the
8 permanency plan and any written comments submitted under par. (b).
9 Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person
10 representing the interests of the public, the child's counsel, the child's guardian ad
11 litem ~~and~~, the child's court-appointed special advocate, and, if the child is an Indian
12 child who is placed outside the home of his or her parent or Indian custodian, the
13 Indian child's Indian custodian and tribe may have access to any other records
14 concerning the child for the purpose of participating in the review. A person
15 permitted access to a child's records under this paragraph may not disclose any
16 information from the records to any other person.

17 **SECTION 119.** 48.38 (5) (e) of the statutes is amended to read:

18 48.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
19 the determinations under par. (c) and shall provide a copy to the court that entered
20 the order; the child or the child's counsel or guardian ad litem; the person
21 representing the interests of the public; the child's parent ~~or~~, guardian, or legal
22 custodian; the child's court-appointed special advocate ~~and~~; the child's foster parent,
23 the child's treatment foster parent, or the operator of the facility where the child is
24 living; and, if the child is an Indian child who is placed outside the home of his or her
25 parent or Indian custodian, the Indian child's Indian custodian and tribe.

SENATE BILL 288

1 **SECTION 120.** 48.38 (5) (e) of the statutes, as affected by 2009 Wisconsin Acts
2 28 and (this act), is repealed and recreated to read:

3 48.38 **(5)** (e) Within 30 days, the agency shall prepare a written summary of
4 the determinations under par. (c) and shall provide a copy to the court that entered
5 the order; the child or the child’s counsel or guardian ad litem; the person
6 representing the interests of the public; the child’s parent, guardian, or legal
7 custodian; the child’s court-appointed special advocate; the child’s foster parent or
8 the operator of the facility where the child is living; and, if the child is an Indian child
9 who is placed outside the home of his or her parent or Indian custodian, the Indian
10 child’s Indian custodian and tribe.

11 **SECTION 121.** 48.38 (5m) (b) of the statutes is amended to read:

12 48.38 **(5m)** (b) Not less than 30 days before the date of the hearing, the court
13 shall notify the child; the child’s parent, guardian, and legal custodian; the child’s
14 foster parent or treatment foster parent, the operator of the facility in which the child
15 is living, or the relative with whom the child is living; the child’s counsel, the child’s
16 guardian ad litem, and the child’s court-appointed special advocate; the agency that
17 prepared the permanency plan; ~~and the person representing the interests of the~~
18 ~~public; and, if the child is an Indian child who is placed outside the home of his or her~~
19 ~~parent or Indian custodian, the Indian child’s Indian custodian and tribe~~ of the date,
20 time, and place of the hearing.

21 **SECTION 122.** 48.38 (5m) (b) of the statutes, as affected by 2009 Wisconsin Acts
22 28 and (this act), is repealed and recreated to read:

23 48.38 **(5m)** (b) Not less than 30 days before the date of the hearing, the court
24 shall notify the child; the child’s parent, guardian, and legal custodian; the child’s
25 foster parent, the operator of the facility in which the child is living, or the relative

SENATE BILL 288

1 with whom the child is living; the child's counsel, the child's guardian ad litem, and
2 the child's court-appointed special advocate; the agency that prepared the
3 permanency plan; the person representing the interests of the public; and, if the child
4 is an Indian child who is placed outside the home of his or her parent or Indian
5 custodian, the Indian child's Indian custodian and tribe of the date, time, and place
6 of the hearing.

7 **SECTION 123.** 48.38 (5m) (d) of the statutes is amended to read:

8 48.38 (5m) (d) At least 5 days before the date of the hearing the agency that
9 prepared the permanency plan shall provide a copy of the permanency plan and any
10 written comments submitted under par. (c) to the court, to the child's parent,
11 guardian, and legal custodian, to the person representing the interests of the public,
12 to the child's counsel or guardian ad litem, ~~and~~ to the child's court-appointed special
13 advocate, and, if the child is an Indian child who is placed outside the home of his or
14 her parent or Indian custodian, to the Indian child's Indian custodian and tribe.
15 Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public,
16 the child's counsel or guardian ad litem, ~~and~~ the child's court-appointed special
17 advocate, and, if the child is an Indian child who is placed outside of the home of his
18 or her parent or Indian custodian, the Indian child's Indian custodian and tribe may
19 have access to any other records concerning the child for the purpose of participating
20 in the review. A person permitted access to a child's records under this paragraph
21 may not disclose any information from the records to any other person.

22 **SECTION 124.** 48.38 (5m) (e) of the statutes is amended to read:

23 48.38 (5m) (e) After the hearing, the court shall make written findings of fact
24 and conclusions of law relating to the determinations under sub. (5) (c) and shall
25 provide a copy of those findings of fact and conclusions of law to the child; the child's

SENATE BILL 288

1 parent, guardian, and legal custodian; the child’s foster parent or treatment foster
2 parent, the operator of the facility in which the child is living, or the relative with
3 whom the child is living; the child’s court–appointed special advocate; the agency
4 that prepared the permanency plan; ~~and the person representing the interests of the~~
5 public; and, if the child is an Indian child who is placed outside the home of his or her
6 parent or Indian custodian, the Indian child’s Indian custodian and tribe. The court
7 shall make the findings specified in sub. (5) (c) 7. on a case–by–case basis based on
8 circumstances specific to the child and shall document or reference the specific
9 information on which those findings are based in the findings of fact and conclusions
10 of law prepared under this paragraph. Findings of fact and conclusions of law that
11 merely reference sub. (5) (c) 7. without documenting or referencing that specific
12 information in the findings of fact and conclusions of law or amended findings of fact
13 and conclusions of law that retroactively correct earlier findings of fact and
14 conclusions of law that do not comply with this paragraph are not sufficient to comply
15 with this paragraph.

16 **SECTION 125.** 48.38 (5m) (e) of the statutes, as affected by 2009 Wisconsin Acts
17 28 and (this act), is repealed and recreated to read:

18 48.38 **(5m)** (e) After the hearing, the court shall make written findings of fact
19 and conclusions of law relating to the determinations under sub. (5) (c) and shall
20 provide a copy of those findings of fact and conclusions of law to the child; the child’s
21 parent, guardian, and legal custodian; the child’s foster parent, the operator of the
22 facility in which the child is living, or the relative with whom the child is living; the
23 child’s court–appointed special advocate; the agency that prepared the permanency
24 plan; the person representing the interests of the public; and, if the child is an Indian
25 child who is placed outside the home of his or her parent or Indian custodian, the

SENATE BILL 288

1 Indian child's Indian custodian and tribe. The court shall make the findings specified
2 in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the child
3 and shall document or reference the specific information on which those findings are
4 based in the findings of fact and conclusions of law prepared under this paragraph.
5 Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without
6 documenting or referencing that specific information in the findings of fact and
7 conclusions of law or amended findings of fact and conclusions of law that
8 retroactively correct earlier findings of fact and conclusions of law that do not comply
9 with this paragraph are not sufficient to comply with this paragraph.

10 **SECTION 126.** 48.41 (2) (e) of the statutes is created to read:

11 48.41 (2) (e) In the case of an Indian child, the consent is given as provided in
12 s. 48.028 (5) (b).

13 **SECTION 127.** 48.415 (intro.) of the statutes is amended to read:

14 **48.415 Grounds for involuntary termination of parental rights.** (intro.)

15 At the fact-finding hearing the court or jury ~~may make a finding that shall determine~~
16 whether grounds exist for the termination of parental rights. If the child is an Indian
17 child, the court or jury shall also determine at the fact-finding hearing whether
18 continued custody of the Indian child by the Indian child's parent or Indian custodian
19 is likely to result in serious emotional or physical damage to the Indian child under
20 s. 48.028 (4) (e) 1. and whether active efforts under s. 48.028 (4) (e) 2. have been made
21 to prevent the breakup of the Indian child's family and whether those efforts have
22 proved unsuccessful, unless partial summary judgment on the grounds for
23 termination of parental rights is granted, in which case the court shall make those
24 determinations at the dispositional hearing. Grounds for termination of parental
25 rights shall be one of the following:

SENATE BILL 288

1 **SECTION 128.** 48.417 (2) (cm) of the statutes is created to read:

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

8 **SECTION 129.** 48.42 (1) (d) of the statutes is amended to read:

9 48.42 (1) (d) A statement of whether the child may be subject to the federal
10 Indian child welfare act Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the
11 child may be subject to that act, the names of the child’s Indian custodian, if any, and
12 tribe, if known.

13 **SECTION 130.** 48.42 (1) (e) of the statutes is created to read:

14 48.42 (1) (e) If the petition is seeking the involuntary termination of parental
15 rights to an Indian child, reliable and credible information showing that continued
16 custody of the Indian child by the Indian child’s parent or Indian custodian is likely
17 to result in serious emotional or physical damage to the Indian child under s. 48.028
18 (4) (e) 1. and reliable and credible information showing that active efforts under s.
19 48.028 (4) (e) 2. have been made to prevent the breakup of the Indian child’s family
20 and that those efforts have proved unsuccessful.

21 **SECTION 131.** 48.42 (2) (c) of the statutes is amended to read:

22 48.42 (2) (c) The guardian, guardian ad litem ~~and~~, legal custodian, and Indian
23 custodian of the child.

24 **SECTION 132.** 48.42 (2g) (ag) of the statutes is created to read:

SENATE BILL 288

1 48.42 (2g) (ag) In the case of an involuntary termination of parental rights to
2 a child whom the petitioner knows or has reason to know is an Indian child, the
3 petitioner shall cause the summons and petition to be served on the Indian child's
4 parent and Indian custodian in the manner specified in s. 48.028 (4) (a). In like
5 manner, the petitioner shall also notify the Indian child's tribe of all hearings on the
6 petition. The first notice to an Indian child's tribe shall be written, shall have a copy
7 of the petition attached to it, and shall state the nature, location, date, and time of
8 the initial hearing. No hearing may be held on the petition until at least 10 days after
9 receipt of notice of the hearing by the Indian child's parent, Indian custodian, and
10 tribe or, if the identity or location of the Indian child's parent, Indian custodian, or
11 tribe cannot be determined, until at least 10 days after receipt of the notice by the
12 U.S. secretary of the interior. On request of the Indian child's parent, Indian
13 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
14 to enable the requester to prepare for the hearing.

15 **SECTION 133.** 48.42 (4) (a) of the statutes is amended to read:

16 48.42 (4) (a) *Personal service.* Except as provided in this paragraph ~~and~~, par.
17 (b), and sub. (2g) (ag), a copy of the summons and petition shall be served personally
18 upon the parties specified in sub. (2), if known, at least 7 days before the date of the
19 hearing. Service of summons is not required if the party submits to the jurisdiction
20 of the court. Service upon parties who are not natural persons and upon persons
21 under a disability shall be as prescribed in s. 801.11.

22 **SECTION 134.** 48.422 (1) of the statutes is amended to read:

23 48.422 (1) The Except as provided in s. 48.42 (2g) (ag), the hearing on the
24 petition to terminate parental rights shall be held within 30 days after the petition
25 is filed. At the hearing on the petition to terminate parental rights the court shall

SENATE BILL 288

1 determine whether any party wishes to contest the petition and inform the parties
2 of their rights under sub. (4) and s. 48.423.

3 **SECTION 135.** 48.422 (2) of the statutes is amended to read:

4 48.422 (2) If Except as provided in s. 48.42 (2g) (ag), if the petition is contested
5 the court shall set a date for a fact-finding hearing to be held within 45 days of after
6 the hearing on the petition, unless all of the necessary parties agree to commence
7 with the hearing on the merits immediately.

8 **SECTION 136.** 48.422 (6) (a) of the statutes is amended to read:

9 48.422 (6) (a) In the case of a nonmarital child who is not adopted or whose
10 parents do not subsequently intermarry under s. 767.803 and for whom paternity
11 has not been established, or for whom a declaration of paternal interest has not been
12 filed under s. 48.025 within 14 days after the date of birth of the child or, if s. 48.42
13 (1g) (b) applies, within 21 days after the date on which the notice under s. 48.42 (1g)
14 (b) is mailed, the court shall hear testimony concerning the paternity of the child.
15 Based on the testimony, the court shall determine whether all interested parties who
16 are known have been notified under s. 48.42 (2) and (2g) (ag). If not, the court shall
17 adjourn the hearing and order appropriate notice to be given.

18 **SECTION 137.** 48.422 (8) of the statutes is amended to read:

19 48.422 (8) If the petition for termination of parental rights is filed by an agency
20 enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit file a
21 report to with the court as provided in s. 48.425 (1), except that, if the child is an
22 Indian child, the court may order the agency or request the tribal child welfare
23 department of the Indian child's tribe to file that report.

24 **SECTION 138.** 48.424 (1) of the statutes is renumbered 48.424 (1) (intro.) and
25 amended to read:

SENATE BILL 288

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

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

6 **SECTION 139.** 48.424 (1) (b) of the statutes is created to read:

7 48.424 (1) (b) Whether the allegations specified in s. 48.42 (1) (e) have been
8 proved in cases involving the involuntary termination of parental rights to an Indian
9 child.

10 **SECTION 140.** 48.424 (2) (intro.) of the statutes is amended to read:

11 48.424 (2) (intro.) The fact-finding hearing shall be conducted according to the
12 procedure specified in s. 48.31 except ~~that~~ as follows:

13 **SECTION 141.** 48.424 (2) (a) of the statutes is amended to read:

14 48.424 (2) (a) The court may exclude the child from the hearing; ~~and,~~

15 **SECTION 142.** 48.424 (3) of the statutes is amended to read:

16 48.424 (3) If the facts are determined by a jury, the jury may only decide
17 whether any grounds for the termination of parental rights have been ~~proven~~ proved
18 and whether the allegations specified in s. 48.42 (1) (e) have been proved in cases
19 involving the involuntary termination of parental rights to an Indian child. The
20 court shall decide what disposition is in the best interest of the child.

21 **SECTION 143.** 48.424 (4) (intro.) of the statutes is amended to read:

22 48.424 (4) (intro.) If grounds for the termination of parental rights are found
23 by the court or jury, the court shall find the parent unfit. A finding of unfitness shall
24 not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed
25 immediately to hear evidence and motions related to the dispositions enumerated in

SENATE BILL 288

1 s. 48.427. ~~The~~ Except as provided in s. 48.42 (2g) (ag), the court may delay making
2 the disposition and set a date for a dispositional hearing no later than 45 days after
3 the fact-finding hearing if any of the following apply:

4 **SECTION 144.** 48.424 (4) (a) of the statutes is amended to read:

5 48.424 (4) (a) All parties to the proceeding agree; ~~or,~~

6 **SECTION 145.** 48.424 (4) (b) of the statutes is amended to read:

7 48.424 (4) (b) The court has not yet received a report to the court on the history
8 of the child as provided in s. 48.425 ~~from an agency enumerated in s. 48.069 (1) or~~
9 ~~(2) and the court now directs the agency to prepare this report to be considered~~ orders
10 an agency enumerated in s. 48.069 (1) or (2) to file that report with the court, or, in
11 the case of an Indian child, now orders that agency or requests the tribal child welfare
12 department of the Indian child's tribe to file such a report, before the court makes the
13 disposition on the petition.

14 **SECTION 146.** 48.424 (5) of the statutes is amended to read:

15 48.424 (5) If the court delays making a permanent disposition under sub. (4),
16 it may transfer temporary custody of the child to an agency for placement of the child
17 until the dispositional hearing. Placement of an Indian child under this subsection
18 shall comply with the order of placement preference under s. 48.028 (7) (b) or, if
19 applicable, s. 48.028 (7) (c), unless the agency finds good cause, as described in s.
20 48.028 (7) (e), for departing from that order.

21 **SECTION 147.** 48.425 (1) (intro.) of the statutes is amended to read:

22 48.425 (1) (intro.) ~~If the petition for the termination of parental rights is filed~~
23 ~~by an agency, or if the court orders~~ an agency enumerated under s. 48.069 (1) or (2)
24 to file a report under s. 48.422 (8) or 48.424 (4) (b) or requests the tribal child welfare
25 department of an Indian child's tribe to file such a report, the agency or tribal child

SENATE BILL 288

1 welfare department, if that department consents, shall file a report with the court
2 which shall include:

3 **SECTION 148.** 48.425 (1) (cm) of the statutes is created to read:

4 48.425 (1) (cm) If the petition is seeking the involuntary termination of
5 parental rights to an Indian child, specific information showing that continued
6 custody of the child by the parent or Indian custodian is likely to result in serious
7 emotional or physical damage to the child under s. 48.028 (4) (e) 1. and, if the Indian
8 child has previously been adjudged to be in need of protection or services, specific
9 information showing that active efforts under s. 48.028 (4) (e) 2. have been made to
10 prevent the breakup of the Indian child's family and that those efforts have proved
11 unsuccessful.

12 **SECTION 149.** 48.427 (5) of the statutes is created to read:

13 48.427 (5) In placing an Indian child in a preadoptive placement following a
14 transfer of guardianship and custody under sub. (3m) or (3p) or in placing an Indian
15 child in sustaining care under sub. (4), the court or an agency specified in sub. (3m)
16 (a) 1. to 4. or (am) shall comply with the order of placement preference under s. 48.028
17 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court or agency finds good cause,
18 as described in s. 48.028 (7) (e), for departing from that order.

19 **SECTION 150.** 48.427 (6) (b) 4. of the statutes is created to read:

20 48.427 (6) (b) 4. If the court knows or has reason to know that the child is an
21 Indian child, information relating to the child's membership or eligibility for
22 membership in an Indian tribe.

23 **SECTION 151.** 48.428 (2) (a) of the statutes is amended to read:

24 48.428 (2) (a) Except as provided in par. (b), when a court places a child in
25 sustaining care after an order under s. 48.427 (4), the court shall transfer legal

SENATE BILL 288

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

12 **SECTION 152.** 48.428 (2) (a) of the statutes, as affected by 2009 Wisconsin Acts
13 28 and (this act), is repealed and recreated to read:

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

SENATE BILL 288

1 **SECTION 153.** 48.428 (2) (b) of the statutes is amended to read:

2 48.428 (2) (b) When a court places a child in sustaining care after an order
3 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
4 under s. 48.977 (2), the court may transfer legal custody of the child to the county
5 department, the department, in a county having a population of 500,000 or more, or
6 a licensed child welfare agency, transfer guardianship of the child to an agency listed
7 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
8 parent, licensed treatment foster parent, or kinship care relative with whom the
9 child has resided for 6 months or longer. In placing an Indian child in sustaining
10 care, the court shall comply with the order of placement preference under s. 48.028
11 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described
12 in s. 48.028 (7) (e), for departing from that order. Pursuant to such a placement, that
13 licensed foster parent, licensed treatment foster parent, or kinship care relative shall
14 be a sustaining parent with the powers and duties specified in sub. (3). If the court
15 transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4.
16 or (am), the court shall terminate the guardianship under s. 48.977.

17 **SECTION 154.** 48.428 (2) (b) of the statutes, as affected by 2009 Wisconsin Acts
18 28 and (this act), is repealed and recreated to read:

19 48.428 (2) (b) When a court places a child in sustaining care after an order
20 under s. 48.427 (4) with a person who has been appointed as the guardian of the child
21 under s. 48.977 (2), the court may transfer legal custody of the child to the county
22 department, the department in a county having a population of 500,000 or more, or
23 a licensed child welfare agency, transfer guardianship of the child to an agency listed
24 in s. 48.427 (3m) (a) 1. to 4. or (am), and place the child in the home of a licensed foster
25 parent or kinship care relative with whom the child has resided for 6 months or

SENATE BILL 288

1 longer. In placing an Indian child in sustaining care, the court shall comply with the
2 order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c),
3 unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from
4 that order. Pursuant to the placement, that licensed foster parent or kinship care
5 relative shall be a sustaining parent with the powers and duties specified in sub. (3).
6 If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m)
7 (a) 1. to 4. or (am), the court shall terminate the guardianship under s. 48.977.

8 **SECTION 155.** 48.43 (5) (bm) of the statutes is created to read:

9 48.43 (5) (bm) If the order under sub. (1) involuntarily terminated parental
10 rights to an Indian child, the court shall also provide notice of the hearing under par.
11 (b) to the Indian child's tribe in the manner specified in s. 48.028 (4) (a). No hearing
12 may be held under par. (b) until at least 10 days after receipt of notice of the hearing
13 by the Indian child's tribe or, if the identity or location of the Indian child's tribe
14 cannot be determined, until at least 10 days after receipt of notice of the hearing by
15 the U.S. secretary of the interior. On request of the Indian child's tribe, the court
16 shall grant a continuance of up to 20 additional days to enable the tribe to prepare
17 for the hearing.

18 **SECTION 156.** 48.43 (5) (c) of the statutes is amended to read:

19 48.43 (5) (c) Following the hearing, the court shall make all of the
20 determinations specified under s. 48.38 (5) (c), except the determinations relating to
21 the child's parents. The court may amend the order under sub. (1) to transfer the
22 child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1.
23 to 4. or (am) that consents to the transfer, if the court determines that the transfer
24 is in the child's best interest. If an Indian child's guardianship and custody are
25 transferred under this paragraph, the agency consenting to the transfer shall comply

SENATE BILL 288

1 with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s.
2 48.028 (7) (c) in placing the child, unless the agency finds good cause, as described
3 in s. 48.028 (7) (e), for departing from that order. If an order is amended, the agency
4 that prepared the permanency plan shall revise the plan to conform to the order and
5 shall file a copy of the revised plan with the court. Each plan filed under this
6 paragraph shall be made a part of the court order.

7 **SECTION 157.** 48.43 (5m) of the statutes is amended to read:

8 48.43 (5m) Either the court or the agency that prepared the permanency plan
9 shall furnish a copy of the original plan and each revised plan to the child, if he or
10 she is 12 years of age or over, ~~and~~ to the child's foster parent, the child's treatment
11 foster parent, or the operator of the facility in which the child is living, ~~and, if the~~
12 order under sub. (1) involuntarily terminated parental rights to an Indian child, to
13 the Indian child's tribe.

14 **SECTION 158.** 48.43 (5m) of the statutes, as affected by 2009 Wisconsin Acts 28
15 and ... (this act), is repealed and recreated to read:

16 48.43 (5m) Either the court or the agency that prepared the permanency plan
17 shall furnish a copy of the original plan and each revised plan to the child, if he or
18 she is 12 years of age or over, to the child's foster parent or the operator of the facility
19 in which the child is living, and, if the order under sub. (1) involuntarily terminated
20 parental rights to an Indian child, to the Indian child's tribe.

21 **SECTION 159.** 48.43 (6) (a) of the statutes is amended to read:

22 48.43 (6) (a) Judgments under this subchapter terminating parental rights are
23 final and are appealable under s. 808.03 (1) according to the procedure specified in
24 s. 809.107 and are subject to a petition for rehearing or a motion for relief only as
25 provided in s. 48.46 (1m) and (2) and, in the case of an Indian child, s. 48.028 (5) (c)

SENATE BILL 288

1 and (6). The attorney representing a person during a proceeding under this
2 subchapter shall continue representation of that person by filing a notice of intent
3 to appeal under s. 809.107 (2), unless the attorney has been previously discharged
4 during the proceeding by the person or by the trial court.

5 **SECTION 160.** 48.43 (6) (c) of the statutes is amended to read:

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

11 **SECTION 161.** 48.46 (2) of the statutes is amended to read:

12 48.46 **(2)** A parent who has consented to the termination of his or her parental
13 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
14 which his or her parental rights were terminated may move the court for relief from
15 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
16 such motion shall be filed within 30 days after the entry of the judgment or order
17 terminating parental rights, unless the parent files a timely notice of intent to
18 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall
19 be filed within the time permitted by s. 809.107 (5). A motion under this subsection
20 does not affect the finality or suspend the operation of the judgment or order
21 terminating parental rights. A parent who has consented to the termination of his
22 or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief
23 from the judgment under s. 48.028 (5) (c) or (6). Motions under this subsection or s.
24 48.028 (5) (c) or (6) and appeals to the court of appeals shall be the exclusive remedies

SENATE BILL 288

1 for such a parent to obtain a new hearing in a termination of parental rights
2 proceeding.

3 **SECTION 162.** 48.48 (3m) (intro.) of the statutes is amended to read:

4 48.48 **(3m)** (intro.) To accept appointment by an ~~American Indian~~ a tribal court
5 in this state as guardian of a child for the purpose of making an adoptive placement
6 for the child if all of the following conditions exist:

7 **SECTION 163.** 48.48 (8m) of the statutes is amended to read:

8 48.48 **(8m)** To enter into agreements with ~~American Indian~~ tribes in this state
9 to implement the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC
10 ~~1911~~ 1901 to 1963.

11 **SECTION 164.** 48.485 of the statutes is amended to read:

12 **48.485 Transfer of tribal Indian children to department for adoption.**

13 If the department accepts guardianship or legal custody or both from an ~~American~~
14 ~~Indian~~ a tribal court under s. 48.48 (3m), the department shall seek a permanent
15 adoptive placement for the child. If a permanent adoptive placement is not in
16 progress within 2 years after entry of the termination of parental rights order by the
17 tribal court, the department may petition the tribal court to transfer legal custody
18 or guardianship of the Indian child back to the Indian tribe, except that the
19 department may not petition the tribal court to transfer back to ~~a~~ an Indian tribe
20 legal custody or guardianship of ~~a~~ an Indian child who was initially taken into
21 custody under s. 48.195 (1).

22 **SECTION 165.** 48.487 (2) of the statutes is amended to read:

23 48.487 **(2)** ADOLESCENT SELF-SUFFICIENCY SERVICES. From the allocation under
24 sub. (1m), the department may provide a grant annually in the amount of \$85,000
25 to the elected governing body of ~~a federally recognized American~~ an Indian tribe ~~or~~

SENATE BILL 288

1 ~~band~~ to provide services for adolescent parents which shall emphasize high school
2 graduation and vocational preparation, training, and experience and may be
3 structured so as to strengthen the adolescent parent’s capacity to fulfill parental
4 responsibilities by developing social skills and increasing parenting skills. The
5 Indian tribe ~~or band~~ seeking to receive a grant to provide these services shall develop
6 a proposed service plan that is approved by the department.

7 **SECTION 166.** 48.487 (3) (b) of the statutes is amended to read:

8 48.487 **(3)** (b) From the allocation under sub. (1m), the department may provide
9 a grant annually in the amount of \$65,000 to the elected governing body of ~~a federally~~
10 ~~recognized American~~ an Indian tribe ~~or band~~ to provide to high-risk adolescents
11 pregnancy and parenthood prevention services which shall be structured so as to
12 increase development of decision-making and communications skills, promote
13 graduation from high school, and expand career and other options and which may
14 address needs of adolescents with respect to pregnancy prevention.

15 **SECTION 167.** 48.487 (4m) (b) (intro.) of the statutes is amended to read:

16 48.487 **(4m)** (b) (intro.) From the allocation under sub. (1m), the department
17 may provide a grant annually in the amount of \$60,000 to the elected governing body
18 of ~~a federally recognized American~~ an Indian tribe ~~or band~~ for the provision of
19 information to members of the Indian tribe ~~or band~~ in order to increase community
20 knowledge about problems of adolescents and information to and activities for
21 adolescents, particularly female adolescents, in order to enable the adolescents to
22 develop skills with respect to all of the following:

23 **SECTION 168.** 48.487 (4m) (c) of the statutes is amended to read:

24 48.487 **(4m)** (c) Each funded tribal project under par. (b) shall provide services
25 in areas of the state as approved by the Indian tribe ~~or band~~ and the department.

SENATE BILL 288

1 The department shall determine the boundaries of the regional areas prior to
2 soliciting project grant applications.

3 **SECTION 169.** 48.487 (4m) (d) of the statutes is amended to read:

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

8 **SECTION 170.** 48.563 (3) of the statutes is amended to read:

9 48.563 (**3**) TRIBAL CHILD CARE. For child care services under 42 USC 9858, the
10 department shall distribute not more than \$412,800 in each fiscal year from the
11 appropriation account under s. 20.437 (1) (b) to ~~federally recognized American~~
12 ~~Indian tribes or bands. A tribe or band. An Indian tribe~~ that receives funding under
13 this subsection shall use that funding to provide child care for an eligible child, as
14 defined in 42 USC 9858n (4).

15 **SECTION 171.** 48.565 (intro.) of the statutes is amended to read:

16 **48.565 Carry-over of children and family aids funds.** (intro.) Funds
17 allocated by the department under s. 48.569 (1) (d) but not spent or encumbered by
18 counties, governing bodies of ~~federally recognized American~~ Indian tribes, or private
19 nonprofit organizations by December 31 of each year and funds recovered under s.
20 48.569 (2) (b) and deposited into the appropriation account under s. 20.437 (1) (b)
21 lapse to the general fund on the succeeding January 1 unless carried forward to the
22 next calendar year under s. 20.437 (1) (b) or as follows:

23 **SECTION 172.** 48.57 (3p) (h) 2. of the statutes is amended to read:

24 48.57 (**3p**) (h) 2. The request for review shall be filed with the director of the
25 county department or, in a county having a population of 500,000 or more, with the

SENATE BILL 288

1 person designated by the secretary to receive requests for review filed under this
2 subdivision. If the governing body of ~~a federally recognized American~~ an Indian
3 ~~tribe or band~~ has entered into an agreement under sub. (3t) to administer the
4 program under this subsection and sub. (3m), the request for review shall be filed
5 with the person designated by that governing body to receive requests for review filed
6 under this subdivision.

7 **SECTION 173.** 48.57 (3p) (h) 3. (intro.) of the statutes is amended to read:

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

19 **SECTION 174.** 48.57 (3p) (h) 4. of the statutes is amended to read:

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

SENATE BILL 288

1 the ability of the kinship care relative to care for the child, the director of the county
2 department, the person designated by the governing body of the ~~federally recognized~~
3 ~~American~~ Indian tribe ~~or band~~, or the person designated by the secretary may
4 approve the making of payments under sub. (3m) or may permit a person receiving
5 payments under sub. (3m) to employ a person in a position in which that person
6 would have regular contact with the child for whom payments are being made or
7 permit a person to be an adult resident.

8 **SECTION 175.** 48.57 (3t) of the statutes is amended to read:

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

20 **SECTION 176.** 48.63 (1) of the statutes is amended to read:

21 48.63 (1) Acting under court order or voluntary agreement, the child's parent
22 ~~or, guardian, or Indian custodian~~, or the department, the department of corrections,
23 a county department, or a child welfare agency licensed to place children in foster
24 homes, treatment foster homes, or group homes may place a child or negotiate or act
25 as intermediary for the placement of a child in a foster home, treatment foster home,

SENATE BILL 288

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

23 **SECTION 177.** 48.63 (1) of the statutes, as affected by 2009 Wisconsin Acts 28
24 and ... (this act), is repealed and recreated to read:

SENATE BILL 288

1 48.63 (1) Acting under court order or voluntary agreement, the child's parent,
2 guardian, or Indian custodian, or the department, the department of corrections, a
3 county department, or a child welfare agency licensed to place children in foster
4 homes or group homes may place a child or negotiate or act as intermediary for the
5 placement of a child in a foster home or group home. Voluntary agreements under
6 this subsection may not be used for placements in facilities other than foster homes
7 or group homes and may not be extended. A foster home placement under a
8 voluntary agreement may not exceed 180 days from the date on which the child was
9 removed from the home under the voluntary agreement. A group home placement
10 under a voluntary agreement may not exceed 15 days from the date on which the
11 child was removed from the home under the voluntary agreement, except as provided
12 in sub. (5). These periods do not apply to placements made under s. 48.345, 938.183,
13 938.34, or 938.345. Voluntary agreements may be made only under this subsection
14 and sub. (5) (b) and shall be in writing and shall specifically state that the agreement
15 may be terminated at any time by the parent, guardian, or Indian custodian or by
16 the child if the child's consent to the agreement is required. In the case of an Indian
17 child who is placed under this subsection by the voluntary agreement of the Indian
18 child's parent or Indian custodian, the voluntary consent of the parent or Indian
19 custodian to the placement shall be given as provided in s. 48.028 (5) (a). The child's
20 consent to the agreement is required whenever the child is 12 years of age or older.
21 If a county department, the department, or the department of corrections places a
22 child or negotiates or acts as intermediary for the placement of a child under this
23 subsection, the voluntary agreement shall also specifically state that the county
24 department, department, or department of corrections has placement and care

SENATE BILL 288

1 responsibility for the child as required under 42 USC 672 (a) (2) and has primary
2 responsibility for providing services to the child.

3 **SECTION 178.** 48.63 (3) (b) 1. of the statutes is amended to read:

4 48.63 (3) (b) 1. At the request of a parent having custody of a child and the
5 proposed adoptive parent or parents of the child, the department, a county
6 department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under
7 s. 48.60 may place the child in the home of the proposed adoptive parent or parents
8 prior to termination of parental rights to the child as provided in subd. 2. or 3.,
9 whichever is applicable, and subd. 4. In placing an Indian child for adoption under
10 this subdivision, the department, county department, or child welfare agency shall
11 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
12 s. 48.028 (7) (c), unless the department, county department, or child welfare agency
13 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

14 **SECTION 179.** 48.63 (4) of the statutes is amended to read:

15 48.63 (4) A permanency plan under s. 48.38 is required for each child placed
16 in a foster home or treatment foster home under sub. (1). If the child is living in a
17 foster home or treatment foster home under a voluntary agreement, the agency that
18 negotiated or acted as intermediary for the placement shall prepare the permanency
19 plan within 60 days after the date on which the child was removed from his or her
20 home under the voluntary agreement. A copy of each plan shall be provided to the
21 child if he or she is 12 years of age or over and to the child's parent or, guardian, or
22 Indian custodian. If the agency that arranged the voluntary placement intends to
23 seek a court order to place the child outside of his or her home at the expiration of
24 the voluntary placement, the agency shall prepare a revised permanency plan and

SENATE BILL 288

1 file that revised plan with the court prior to the date of the hearing on the proposed
2 placement.

3 **SECTION 180.** 48.63 (4) of the statutes, as affected by 2009 Wisconsin Acts 28
4 and ... (this act), is repealed and recreated to read:

5 48.63 (4) A permanency plan under s. 48.38 is required for each child placed
6 in a foster home under sub. (1). If the child is living in a foster home under a
7 voluntary agreement, the agency that negotiated or acted as intermediary for the
8 placement shall prepare the permanency plan within 60 days after the date on which
9 the child was removed from his or her home under the voluntary agreement. A copy
10 of each plan shall be provided to the child if he or she is 12 years of age or over and
11 to the child's parent, guardian, or Indian custodian. If the agency that arranged the
12 voluntary placement intends to seek a court order to place the child outside of his or
13 her home at the expiration of the voluntary placement, the agency shall prepare a
14 revised permanency plan and file that revised plan with the court prior to the date
15 of the hearing on the proposed placement.

16 **SECTION 181.** 48.63 (5) (b) of the statutes is amended to read:

17 48.63 (5) (b) If a child who is at least 14 years of age, who is a custodial parent,
18 as defined in s. 49.141 (1) (b), or an expectant mother, and who is in need of a safe
19 and structured living arrangement and the parent ~~or~~, guardian, or Indian custodian
20 of the child consent, a child welfare agency licensed to place children in group homes
21 may place the child or arrange the placement of the child in a group home described
22 in s. 48.625 (1m). Before placing a child or arranging the placement of a child under
23 this paragraph, the child welfare agency shall report any suspected abuse or neglect
24 of the child as required under s. 48.981 (2). A voluntary agreement to place a child
25 in a group home described in s. 48.625 (1m) may be made only under this paragraph,

SENATE BILL 288

1 shall be in writing, and shall specifically state that the agreement may be terminated
2 at any time by the parent, guardian, Indian custodian, or child. In the case of an
3 Indian child who is placed in a group home under this paragraph by the voluntary
4 agreement of the Indian child's parent or Indian custodian, the voluntary consent of
5 the parent or Indian custodian to the placement shall be given as provided in s.
6 48.028 (5) (a). An initial placement under this paragraph may not exceed 180 days
7 from the date on which the child was removed from the home under the voluntary
8 agreement, but may be extended as provided in par. (d) 3. to 6. An initial placement
9 under this paragraph of a child who is under 16 years of age on the date of the initial
10 placement may be extended as provided in par. (d) 3. to 6. no more than once.

11 **SECTION 182.** 48.63 (5) (c) of the statutes is amended to read:

12 48.63 (5) (c) A permanency plan under s. 48.38 is required for each child placed
13 in a group home under par. (b) and for any child of that child who is residing with that
14 child. The agency that placed the child or that arranged the placement of the child
15 shall prepare the plan within 60 days after the date on which the child was removed
16 from his or her home under the voluntary agreement and shall provide a copy of the
17 plan to the child and the child's parent or, guardian, or Indian custodian.

18 **SECTION 183.** 48.63 (5) (d) 3. of the statutes is amended to read:

19 48.63 (5) (d) 3. If the agency that has placed a child under par. (b) or that has
20 arranged the placement of the child wishes to extend the placement of the child, the
21 agency shall prepare a revised permanency plan for that child and for any child of
22 that child who is residing with that child and submit the revised permanency plan
23 or plans, together with a request for a review of the revised permanency plan or plans
24 and the child's placement, to the independent reviewing agency before the expiration
25 of the child's placement. The request shall include a statement that an extension of

SENATE BILL 288

1 the child's placement would be in the best interests of the child, together with reliable
2 and credible information in support of that statement, a statement that the child and
3 the parent ~~or~~, guardian, or Indian custodian of the child consent to the extension of
4 the child's placement, and a request that the independent reviewing agency approve
5 an extension of the child's placement. On receipt of a revised permanency plan or
6 plans and a request for review, the independent reviewing agency shall set a time and
7 place for the review and shall advise the agency that placed the child or that arranged
8 the placement of the child of the time and place of the review.

9 **SECTION 184.** 48.63 (5) (d) 4. of the statutes is amended to read:

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

20 **SECTION 185.** 48.63 (5) (d) 5. of the statutes is amended to read:

21 48.63 (5) (d) 5. At the review, any person specified in subd. 4. may present
22 information relevant to the issue of extension and information relevant to the
23 determinations specified in s. 48.38 (5) (c). After receiving that information, the
24 independent reviewing agency shall make the determinations specified in s. 48.38
25 (5) (c) and determine whether an extension of the child's placement is in the best

SENATE BILL 288

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

20 **SECTION 186.** 48.63 (5) (d) 6. of the statutes is amended to read:

21 48.63 (5) (d) 6. Within 30 days after the review, the agency that prepared the
22 revised permanency plan or plans shall prepare a written summary of the
23 determinations specified in s. 48.38 (5) (c) that were made under subd. 5. and shall
24 provide a copy of that summary to the independent reviewing agency, the child, the

SENATE BILL 288

1 parent, guardian, Indian custodian, and legal custodian of the child, and the operator
2 of the group home in which the child was placed.

3 **SECTION 187.** 48.645 (1) (a) of the statutes is amended to read:

4 48.645 (1) (a) The child is living in a foster home or treatment foster home
5 licensed under s. 48.62 if a license is required under that section, in a foster home
6 or treatment foster home located within the boundaries of a ~~federally recognized~~
7 ~~American Indian~~ reservation in this state and licensed by the tribal governing body
8 of the reservation, in a group home licensed under s. 48.625, in a subsidized
9 guardianship home under s. 48.62 (5), or in a residential care center for children and
10 youth licensed under s. 48.60, and has been placed in the foster home, treatment
11 foster home, group home, subsidized guardianship home, or center by a county
12 department under s. 46.215, 46.22, or 46.23, by the department, or by a ~~federally~~
13 ~~recognized American Indian tribal~~ governing body of an Indian tribe in this state
14 under an agreement with a county department under s. 46.215, 46.22, or 46.23.

15 **SECTION 188.** 48.645 (1) (a) of the statutes, as affected by 2009 Wisconsin Acts
16 28 and (this act), is repealed and recreated to read:

17 48.645 (1) (a) The child is living in a foster home licensed under s. 48.62 if a
18 license is required under that section, in a foster home located within the boundaries
19 of a reservation in this state and licensed by the tribal governing body of the
20 reservation, in a group home licensed under s. 48.625, in a subsidized guardianship
21 home under s. 48.62 (5), or in a residential care center for children and youth licensed
22 under s. 48.60, and has been placed in the foster home, group home, subsidized
23 guardianship home, or center by a county department under s. 46.215, 46.22, or
24 46.23, by the department, or by a governing body of an Indian tribe in this state under
25 an agreement with a county department under s. 46.215, 46.22, or 46.23.

SENATE BILL 288

1 **SECTION 189.** 48.645 (2) (a) 1. of the statutes is amended to read:

2 48.645 (2) (a) 1. A nonrelative who cares for the dependent child in a foster
3 home or treatment foster home having a license under s. 48.62, in a foster home or
4 treatment foster home located within the boundaries of a ~~federally recognized~~
5 ~~American Indian~~ reservation in this state and licensed by the tribal governing body
6 of the reservation or in a group home licensed under s. 48.625, a subsidized guardian
7 or interim caretaker under s. 48.62 (5) who cares for the dependent child, or a minor
8 custodial parent who cares for the dependent child, regardless of the cause or
9 prospective period of dependency. The state shall reimburse counties pursuant to the
10 procedure under s. 48.569 (2) and the percentage rate of participation set forth in s.
11 48.569 (1) (d) for aid granted under this section except that if the child does not have
12 legal settlement in the granting county, state reimbursement shall be at 100%. The
13 county department under s. 46.215, 46.22, or 46.23 or the department under s. 48.48
14 (17) shall determine the legal settlement of the child. A child under one year of age
15 shall be eligible for aid under this subsection irrespective of any other residence
16 requirement for eligibility within this section.

17 **SECTION 190.** 48.645 (2) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts
18 28 and (this act), is repealed and recreated to read:

19 48.645 (2) (a) 1. A nonrelative who cares for the dependent child in a foster
20 home having a license under s. 48.62, in a foster home located within the boundaries
21 of a reservation in this state and licensed by the tribal governing body of the
22 reservation or in a group home licensed under s. 48.625, a subsidized guardian or
23 interim caretaker under s. 48.62 (5) who cares for the dependent child, or a minor
24 custodial parent who cares for the dependent child, regardless of the cause or
25 prospective period of dependency. The state shall reimburse counties pursuant to the

SENATE BILL 288

1 procedure under s. 48.569 (2) and the percentage rate of participation set forth in s.
2 48.569 (1) (d) for aid granted under this section except that if the child does not have
3 legal settlement in the granting county, state reimbursement shall be at 100%. The
4 county department under s. 46.215, 46.22, or 46.23 or the department under s. 48.48
5 (17) shall determine the legal settlement of the child. A child under one year of age
6 shall be eligible for aid under this subsection irrespective of any other residence
7 requirement for eligibility within this section.

8 **SECTION 191.** 48.645 (2) (a) 3. of the statutes is amended to read:

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

20 **SECTION 192.** 48.645 (2) (a) 3. of the statutes, as affected by 2009 Wisconsin Acts
21 28 and (this act), is repealed and recreated to read:

22 48.645 (2) (a) 3. A county or, in a county having a population of 500,000 or more,
23 the department, when the child is placed in a licensed foster home, group home, or
24 residential care center for children and youth or in a subsidized guardianship home
25 by a licensed child welfare agency or by a governing body of an Indian tribe in this

SENATE BILL 288

1 state or by its designee, if the child is in the legal custody of the county department
2 under s. 46.215, 46.22, or 46.23 or the department under s. 48.48 (17) or if the child
3 was removed from the home of a relative as a result of a judicial determination that
4 continuance in the home of the relative would be contrary to the child's welfare for
5 any reason and the placement is made under an agreement with the county
6 department or the department.

7 **SECTION 193.** 48.645 (2) (a) 4. of the statutes is amended to read:

8 48.645 (2) (a) 4. A licensed foster home, treatment foster home, group home,
9 or residential care center for children and youth or a subsidized guardianship home
10 when the child is in the custody or guardianship of the state, when the child is a ward
11 of ~~an American Indian~~ a tribal court in this state and the placement is made under
12 an agreement between the department and the ~~tribal~~ governing body of the Indian
13 tribe of the tribal court, or when the child was part of the state's direct service case
14 load and was removed from the home of a relative as a result of a judicial
15 determination that continuance in the home of a relative would be contrary to the
16 child's welfare for any reason and the child is placed by the department.

17 **SECTION 194.** 48.645 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Acts
18 28 and (this act), is repealed and recreated to read:

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

SENATE BILL 288

1 would be contrary to the child's welfare for any reason and the child is placed by the
2 department.

3 **SECTION 195.** 48.645 (2) (b) of the statutes is amended to read:

4 48.645 (2) (b) Notwithstanding par. (a), aid under this section may not be
5 granted for placement of a child in a foster home or treatment foster home licensed
6 by a ~~federally recognized American Indian tribal~~ governing body of an Indian tribe,
7 for placement of a child in a foster home, treatment foster home, group home,
8 subsidized guardianship home, or residential care center for children and youth by
9 a ~~tribal~~ governing body of an Indian tribe or its designee, or for the placement of a
10 child who is a ward of a tribal court if the ~~tribal~~ governing body of the Indian tribe
11 of the tribal court is receiving or is eligible to receive funds from the federal
12 government for that type of placement.

13 **SECTION 196.** 48.645 (2) (b) of the statutes, as affected by 2009 Wisconsin Acts
14 28 and (this act), is repealed and recreated to read:

15 48.645 (2) (b) Notwithstanding par. (a), aid under this section may not be
16 granted for placement of a child in a foster home licensed by a governing body of an
17 Indian tribe, for placement of a child in a foster home, group home, subsidized
18 guardianship home, or residential care center for children and youth by a governing
19 body of an Indian tribe or its designee, or for the placement of a child who is a ward
20 of a tribal court if the governing body of the Indian tribe of the tribal court is receiving
21 or is eligible to receive funds from the federal government for that type of placement.

22 **SECTION 197.** 48.685 (1) (e) of the statutes is repealed.

23 **SECTION 198.** 48.685 (5) (a) of the statutes, as affected by 2009 Wisconsin Act
24 28, is amended to read:

SENATE BILL 288

1 48.685 (5) (a) Subject to par. (bm), the department may license to operate an
2 entity, the department in a county having a population of 500,000 or more, a county
3 department, or an agency contracted with under s. 48.651 (2) may certify under s.
4 48.651, a county department or a child welfare agency may license under s. 48.62,
5 and a school board may contract with under s. 120.13 (14) a person who otherwise
6 may not be licensed, certified, or contracted with for a reason specified in sub. (4m)
7 (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the entity
8 a person who otherwise may not be employed, contracted with, or permitted to reside
9 at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates
10 to the department, the county department, the contracted agency, the child welfare
11 agency, or the school board or, in the case of an entity that is located within the
12 boundaries of a reservation, to the person or body designated by the Indian tribe
13 under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with
14 procedures established by the department by rule or by the tribe that he or she has
15 been rehabilitated.

16 **SECTION 199.** 48.685 (5d) (a) (intro.) of the statutes is amended to read:

17 48.685 (5d) (a) (intro.) Any Indian tribe that chooses to conduct rehabilitation
18 reviews under sub. (5) shall submit to the department a rehabilitation review plan
19 that includes all of the following:

20 **SECTION 200.** 48.685 (5d) (a) 2. of the statutes is amended to read:

21 48.685 (5d) (a) 2. The title of the person or body designated by the Indian tribe
22 to whom a request for review must be made.

23 **SECTION 201.** 48.685 (5d) (a) 3. of the statutes is amended to read:

24 48.685 (5d) (a) 3. The title of the person or body designated by the Indian tribe
25 to determine whether a person has been rehabilitated.

SENATE BILL 288

1 **SECTION 202.** 48.685 (5d) (a) 3m. of the statutes is amended to read:

2 48.685 **(5d)** (a) 3m. The title of the person or body, designated by the Indian
3 tribe, to whom a person may appeal an adverse decision made by the person specified
4 under subd. 3. and whether the Indian tribe provides any further rights to appeal.

5 **SECTION 203.** 48.685 (5d) (a) 4. of the statutes is amended to read:

6 48.685 **(5d)** (a) 4. The manner in which the Indian tribe will submit information
7 relating to a rehabilitation review to the department so that the department may
8 include that information in its report to the legislature required under sub. (5g).

9 **SECTION 204.** 48.685 (5d) (b) of the statutes is amended to read:

10 48.685 **(5d)** (b) If, within 90 days after receiving the plan, the department does
11 not disapprove the plan, the plan shall be considered approved. If, within 90 days
12 after receiving the plan, the department disapproves the plan, the department shall
13 provide notice of that disapproval to the Indian tribe in writing, together with the
14 reasons for the disapproval. The department may not disapprove a plan unless the
15 department finds that the plan is not rationally related to the protection of clients.
16 If the department disapproves the plan, the Indian tribe may, within 30 days after
17 receiving notice of the disapproval, request that the secretary review the
18 department's decision. A final decision under this paragraph is not subject to further
19 review under ch. 227.

20 **SECTION 205.** 48.825 (1) (b) of the statutes is amended to read:

21 48.825 **(1)** (b) "Another jurisdiction" means a state of the United States other
22 than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any
23 territory or insular possession subject to the jurisdiction of the United States or a
24 federally recognized American an Indian tribe or band.

25 **SECTION 206.** 48.83 (1) of the statutes is amended to read:

SENATE BILL 288

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

8 **SECTION 207.** 48.831 (1r) of the statutes is created to read:

9 48.831 (1r) NOTICE. When a petition is filed under sub. (1m), the court shall
10 provide notice of the fact-finding hearing under sub. (3) to all interested parties as
11 provided in s. 48.27 (6). If the court knows or has reason to know that the child is
12 an Indian child, the court shall provide notice to the Indian child's Indian custodian,
13 if any, and tribe, if known, in the manner specified in s. 48.028 (4) (a). No hearing
14 may be held under sub. (3) until at least 10 days after receipt of the notice by the
15 Indian child's Indian custodian and tribe or, if the identity or location of the Indian
16 child's Indian custodian or tribe cannot be determined, until at least 10 days after
17 receipt of the notice by the U.S. secretary of the interior. On request of the Indian
18 child's Indian custodian or tribe, the court shall grant a continuance of up to 20
19 additional days to enable the requester to prepare for the hearing.

20 **SECTION 208.** 48.831 (2) of the statutes is amended to read:

21 48.831 (2) REPORT. If the department, county department, or child welfare
22 agency files a petition, ~~it shall submit~~ the court shall order the department, county
23 department, or child welfare agency to file a report ~~to~~ with the court containing as
24 much of the information specified under s. 48.425 (1) (a) and (am) as is reasonably
25 ascertainable and, if applicable, the information specified under s. 48.425 (1) (g). If

SENATE BILL 288

1 the petition is filed by a relative or other person specified under sub. (1m) (d), the
2 court shall order the department or a child welfare agency, if the department or
3 agency consents, or a county department to file a report containing the information
4 specified in this subsection. If the child is an Indian child, the court may order the
5 department, county department, or child welfare agency, or request the tribal child
6 welfare department of the Indian child's tribe, if that department consents, to file a
7 report containing the information specified in this subsection. The department,
8 county department ~~or~~, child welfare agency, or tribal child welfare department, if
9 that department consents, shall file the report at least 5 days before the date of the
10 fact-finding hearing on the petition.

11 **SECTION 209.** 48.831 (4) (cm) of the statutes is created to read:

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

24 **SECTION 210.** 48.833 (3) of the statutes is created to read:

SENATE BILL 288

1 48.833 (3) INDIAN CHILD; PLACEMENT PREFERENCES. In placing an Indian child for
2 adoption under sub. (1) or (2), the department, county department, or child welfare
3 agency shall comply with the order of placement preference under s. 48.028 (7) (a)
4 or, if applicable, s. 48.028 (7) (c), unless the department, county department, or child
5 welfare agency finds good cause, as described in s. 48.028 (7) (e), for departing from
6 that order.

7 **SECTION 211.** 48.837 (1r) (a) of the statutes is amended to read:

8 48.837 (1r) (a) At the request of a parent having custody of a child and the
9 proposed adoptive parent or parents of the child, the department, a county
10 department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under
11 s. 48.60 may place the child in the home of the proposed adoptive parent or parents
12 prior to the filing of a petition under sub. (2) as provided in par. (b) or (c), whichever
13 is applicable, and par. (d). In placing an Indian child for adoption under this
14 paragraph, the department, county department, or child welfare agency shall
15 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
16 s. 48.028 (7) (c), unless the department, county department, or child welfare agency
17 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

18 **SECTION 212.** 48.837 (2) (e) of the statutes is created to read:

19 48.837 (2) (e) If the child is an Indian child, the names and addresses of the
20 Indian child's Indian custodian, if any, and tribe, if known.

21 **SECTION 213.** 48.837 (4) (c) of the statutes is amended to read:

22 48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the
23 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the
24 proposed adoptive placement, to interview each petitioner, to provide counseling if
25 requested, and to report its recommendation to the court at least 5 days before the

SENATE BILL 288

1 hearing on the petition. If a licensed child welfare agency or, in the case of an Indian
2 child, the tribal child welfare department of the Indian child's tribe has investigated
3 the proposed adoptive placement and interviewed the petitioners, the court may
4 accept a report and recommendation from the child welfare agency or tribal child
5 welfare department in place of the court-ordered report required under this
6 paragraph. In reporting its recommendations under this paragraph with respect to
7 an Indian child, the department, a county department, or a child welfare agency shall
8 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
9 s. 48.028 (7) (c), unless the department, county department, or child welfare agency
10 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

11 **SECTION 214.** 48.837 (4) (d) of the statutes is amended to read:

12 48.837 (4) (d) May, in the case of a child who has not been placed under sub.
13 (1r), order the department or a county department under s. 48.57 (1) (e) or (hm), at
14 the request of a petitioning parent or on its own motion after ordering the child taken
15 into custody under s. 48.19 (1) (c), to place the child, pending the hearing on the
16 petition, in any home in this state that is licensed under s. 48.62 or in any home
17 outside this state if the conditions under sub. (1r) (c) are met. In placing an Indian
18 child for adoption under this paragraph, the department or county department shall
19 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
20 s. 48.028 (7) (c), unless the department, county department, or child welfare agency
21 finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

22 **SECTION 215.** 48.837 (6) (c) of the statutes is amended to read:

23 48.837 (6) (c) After the hearing on the petition under sub. (2), the court shall
24 make findings on the allegations of the petition and the report ordered under sub.
25 (4) (c) and make a conclusion as to whether placement in the home is in the best

SENATE BILL 288

1 interest of the child. In determining whether placement of an Indian child in the
2 home is in the best interest of the Indian child, the court shall comply with the order
3 of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless
4 the court finds good cause, as described in s. 48.028 (7) (e), for departing from that
5 order.

6 **SECTION 216.** 48.85 (1) of the statutes is amended to read:

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

11 **SECTION 217.** 48.88 (2) (a) (intro.) of the statutes is amended to read:

12 48.88 (2) (a) (intro.) Except as provided under ~~par.~~ pars. (ag) and (c), when a
13 petition to adopt a child is filed, the court shall order an investigation to determine
14 whether the child is a proper subject for adoption and whether the petitioner's home
15 is suitable for the child. The court shall order one of the following to conduct the
16 investigation:

17 **SECTION 218.** 48.88 (2) (ag) of the statutes is created to read:

18 48.88 (2) (ag) If the child is an Indian child, the court may request the tribal
19 child welfare department of the Indian child's tribe to conduct the investigation. If
20 the tribal child welfare department agrees to conduct the investigation, that
21 investigation may be accepted in lieu of the investigation under par. (a).

22 **SECTION 219.** 48.88 (2) (b) of the statutes is amended to read:

23 48.88 (2) (b) The agency or tribal child welfare department making the
24 investigation shall file its report with the court at least 10 days before the hearing
25 unless the time is reduced for good cause shown by the petitioner. In reporting on

SENATE BILL 288

1 an investigation of the proposed adoptive home of an Indian child, the agency shall
2 comply with the order of placement preference under s. 48.028 (7) (a) or, if applicable,
3 s. 48.028 (7) (c), unless the agency finds good cause, as described in s. 48.028 (7) (e),
4 for departing from that order. The report shall be part of the record of the
5 proceedings.

6 **SECTION 220.** 48.89 (1) of the statutes is amended to read:

7 48.89 (1) The recommendation of the department is required for the adoption
8 of a child if the child is not under the guardianship of a county department under s.
9 48.57 (1) (e) or (hm) or a child welfare agency under s. 48.61 (5). In making a
10 recommendation under this subsection with respect to an Indian child, the
11 department shall comply with the order of placement preference under s. 48.028 (7)
12 (a) or, if applicable, s. 48.028 (7) (c), unless the department finds good cause, as
13 described in s. 48.028 (7) (e), for departing from that order.

14 **SECTION 221.** 48.91 (3) of the statutes is amended to read:

15 48.91 (3) If after the hearing and a study of the report required by s. 48.88 and
16 the recommendation required by s. 48.841 or 48.89, the court is satisfied that the
17 necessary consents or recommendations have been filed and that the adoption is in
18 the best interests of the child, the court shall make an order granting the adoption.
19 In determining whether the adoption is in the best interests of an Indian child, the
20 court shall comply with the order of placement preference under s. 48.028 (7) (a) or,
21 if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s.
22 48.028 (7) (e), for departing from that order. The order may change the name of the
23 minor to that requested by petitioners.

24 **SECTION 222.** 48.93 (1d) of the statutes is amended to read:

SENATE BILL 288

1 48.93 (1d) All records and papers pertaining to an adoption proceeding shall
2 be kept in a separate locked file and may not be disclosed except under sub. (1g) ~~or~~,
3 (1r), or (1v), s. 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of
4 the court for good cause shown.

5 **SECTION 223.** 48.93 (1v) of the statutes is created to read:

6 48.93 (1v) (a) At the time a court enters an order granting adoption of an Indian
7 child, the court shall provide the U.S. secretary of the interior with the information
8 specified in s. 48.028 (9) (a) and (b).

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

12 **SECTION 224.** 48.977 (4) (a) 1. of the statutes is amended to read:

13 48.977 (4) (a) 1. The child or the child's guardian ~~or~~, legal custodian, or Indian
14 custodian.

15 **SECTION 225.** 48.977 (4) (b) 6. of the statutes is amended to read:

16 48.977 (4) (b) 6. A statement of whether the child may be subject to the federal
17 Indian ~~child welfare act~~ Child Welfare Act, 25 USC 1911 1901 to 1963, and, if the
18 child may be subject to that act, the names and addresses of the child's Indian
19 custodian, if any, and Indian tribe, if known.

20 **SECTION 226.** 48.977 (4) (c) 1. j. of the statutes is created to read:

21 48.977 (4) (c) 1. j. If the child is an Indian child, the Indian child's Indian
22 custodian, if any, and tribe, if known.

23 **SECTION 227.** 48.977 (4) (c) 2. of the statutes is amended to read:

24 48.977 (4) (c) 2. ~~Service~~ Except as provided in subd. 2m., service shall be made
25 by 1st class mail at least 7 days before the hearing or by personal service at least 7

SENATE BILL 288

1 days before the hearing or, if with reasonable diligence a party specified in subd. 1.
2 cannot be served by mail or personal service, service shall be made by publication of
3 a notice published as a class 1 notice under ch. 985. In determining which newspaper
4 is likely to give notice as required under s. 985.02 (1), the petitioner shall consider
5 the residence of the party, if known, or the residence of the relatives of the party, if
6 known, or the last-known location of the party.

7 **SECTION 228.** 48.977 (4) (c) 2m. of the statutes is created to read:

8 48.977 (4) (c) 2m. If the petitioner knows or has reason to know that the child
9 is an Indian child, service under subd. 2. to the Indian child's parent, Indian
10 custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). No
11 hearing may be held under par. (cm) until at least 10 days after receipt of service by
12 the Indian child's parent, Indian custodian, and tribe or, if the identity or location of
13 the Indian child's parent, Indian custodian, or tribe cannot be determined, until at
14 least 10 days after receipt of service by the U.S. secretary of the interior. On request
15 of the Indian child's parent, Indian custodian, or tribe, the court shall grant a
16 continuance of up to 20 additional days to enable the requester to prepare for the
17 hearing.

18 **SECTION 229.** 48.977 (4) (g) 4. of the statutes is created to read:

19 48.977 (4) (g) 4. If the child is an Indian child, the order of placement preference
20 under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the court finds good
21 cause, as described in s. 48.028 (7) (e), for departing from that order.

22 **SECTION 230.** 48.978 (2) (b) 11. of the statutes is amended to read:

23 48.978 (2) (b) 11. A statement of whether the child may be subject to the federal
24 Indian Child Welfare Act, 25 USC ~~1911~~ 1901 to 1963, and, if the child may be subject

SENATE BILL 288

1 to that act, the names and addresses of the child’s Indian custodian, if any, and
2 Indian tribe, if known.

3 **SECTION 231.** 48.981 (1) (cs) of the statutes is renumbered 48.02 (8g) and
4 amended to read:

5 48.02 (8g) “Indian child” means any unmarried person who is under the age
6 of 18 years and is affiliated with an Indian tribe ~~or band~~ in any of the following ways:

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

10 **SECTION 232.** 48.981 (1) (ct) of the statutes is amended to read:

11 48.981 (1) (ct) “Indian unborn child” means an unborn child who, when born,
12 may be eligible for affiliation with an Indian tribe ~~or band~~ in any of the following
13 ways:

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

17 **SECTION 233.** 48.981 (1) (i) of the statutes is amended to read:

18 48.981 (1) (i) “Tribal agent” means the person designated under 25 CFR 23.12
19 by an Indian tribe ~~or band~~ to receive notice of involuntary child custody proceedings
20 under the ~~Indian child welfare act~~ federal Indian Child Welfare Act, 25 USC 1901
21 to 1963.

22 **SECTION 234.** 48.981 (3) (bm) (intro.) of the statutes is amended to read:

23 48.981 (3) (bm) *Notice of report to Indian tribal agent.* (intro.) In a county
24 ~~which~~ that has wholly or partially within its boundaries a federally recognized
25 Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe,

SENATE BILL 288

1 if a county department ~~which~~ that receives a report under par. (a) pertaining to a
2 child or unborn child knows or has reason to know that the child is an Indian child
3 who resides in the county or that the unborn child is an Indian unborn child whose
4 expectant mother resides in the county, the county department shall provide notice,
5 which shall consist only of the name and address of the Indian child or expectant
6 mother and the fact that a report has been received about that Indian child or Indian
7 unborn child, within 24 hours to one of the following:

8 **SECTION 235.** 48.981 (3) (bm) 1. of the statutes is amended to read:

9 48.981 (3) (bm) 1. If the county department knows with which Indian tribe or
10 ~~band~~ the child is affiliated, or with which Indian tribe or ~~band~~ the Indian unborn
11 child, when born, may be eligible for affiliation, and if ~~it~~ the Indian tribe is a Wisconsin
12 ~~tribe or band, the tribal agent of that tribe or band~~ Indian tribe, the tribal agent of
13 that tribe.

14 **SECTION 236.** 48.981 (3) (bm) 2. of the statutes is amended to read:

15 48.981 (3) (bm) 2. If the county department does not know with which Indian
16 ~~tribe or band~~ the child is affiliated, or with which Indian tribe or ~~band~~ the Indian
17 unborn child, when born, may be eligible for affiliation, or the child or expectant
18 mother is not affiliated with a Wisconsin Indian tribe or ~~band~~, the tribal agent
19 serving the reservation or Ho-Chunk service area where the child or expectant
20 mother resides.

21 **SECTION 237.** 48.981 (7) (a) 10m. of the statutes is amended to read:

22 48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a
23 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
24 jurisdiction over children and unborn children alleged to be in need of protection or
25 services for use in proceedings in which abuse or neglect of the child who is the

SENATE BILL 288

1 subject of the report or record or abuse of the unborn child who is the subject of the
2 report or record is an issue.

3 **SECTION 238.** 48.981 (7) (a) 10r. of the statutes is amended to read:

4 48.981 (7) (a) 10r. A tribal court, or other adjudicative body authorized by a
5 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
6 jurisdiction over children alleged to be in need of protection or services for use in
7 proceedings in which an issue is the substantial risk of abuse or neglect of a child
8 who, during the time period covered by the report or record, was in the home of the
9 child who is the subject of the report or record.

10 **SECTION 239.** 48.981 (7) (a) 11m. of the statutes is amended to read:

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

15 **SECTION 240.** 48.983 (1) (d) of the statutes is repealed.

16 **SECTION 241.** 48.983 (1) (e) of the statutes is repealed.

17 **SECTION 242.** 806.245 (1m) of the statutes is created to read:

18 806.245 (1m) The public acts, records, and judicial proceedings of any Indian
19 tribe that are applicable to an Indian child custody proceeding, as defined in s. 48.028
20 (2) (d), or an Indian juvenile child custody proceeding, as defined in s. 938.028 (2) (b),
21 shall be given full faith and credit by the state as provided in s. 48.028 (3) (f) or
22 938.028 (3) (f).

23 **SECTION 243.** 938.01 (3) of the statutes is created to read:

24 938.01 (3) INDIAN JUVENILE WELFARE; DECLARATION OF POLICY. In Indian juvenile
25 custody proceedings, the best interests of the Indian juvenile shall be determined in

SENATE BILL 288

1 accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and the
2 policy specified in this subsection. It is the policy of this state for courts and agencies
3 responsible for juvenile welfare to do all of the following:

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

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

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

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

19 **SECTION 244.** 938.02 (8d) of the statutes is created to read:

20 938.02 (8d) "Indian" means any person who is a member of an Indian tribe or
21 who is an Alaska native and a member of a regional corporation, as defined in 43 USC
22 1606.

23 **SECTION 245.** 938.02 (8g) of the statutes is created to read:

24 938.02 (8g) "Indian juvenile" means an unmarried person who is under 18
25 years of age and who is affiliated with an Indian tribe in any of the following ways:

SENATE BILL 288

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

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

4 **SECTION 246.** 938.02 (8m) of the statutes is created to read:

5 938.02 (8m) “Indian juvenile’s tribe” means one of the following:

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

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

11 **SECTION 247.** 938.02 (8p) of the statutes is created to read:

12 938.02 (8p) “Indian custodian” means an Indian person who has legal custody
13 under tribal law or custom or under state law of an Indian juvenile who is the subject
14 of an Indian juvenile custody proceeding, as defined in s. 938.028 (2) (b), or of an
15 Indian juvenile in need of protection or services under s. 938.13 (4), (6), (6m), or (7)
16 who is the subject of a temporary physical custody proceeding under ss. 939.19 to
17 938.21 or to whom temporary physical care, custody, and control has been
18 transferred by the parent of that juvenile.

19 **SECTION 248.** 938.02 (8r) of the statutes is created to read:

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

24 **SECTION 249.** 938.02 (9m) of the statutes is renumbered 938.02 (8b).

25 **SECTION 250.** 938.02 (10m) of the statutes is amended to read:

SENATE BILL 288

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

6 **SECTION 251.** 938.02 (12m) of the statutes is amended to read:

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

11 **SECTION 252.** 938.02 (13) of the statutes is amended to read:

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

SENATE BILL 288

1 or a substantially similar law of another state or adjudicated to be the biological
2 father, but does not include any person whose parental rights have been terminated.

3 **SECTION 253.** 938.02 (15) of the statutes is amended to read:

4 938.02 (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. 938.028 and the federal Indian Child Welfare Act, 25 USC 1901 to
11 1963, “relative” includes an extended family member, as defined in s. 938.028 (2) (a),
12 whether by blood, marriage, or adoption, including adoption under tribal law or
13 custom.

14 **SECTION 254.** 938.02 (15c) of the statutes is amended to read:

15 938.02 (15c) “Reservation,” except as otherwise provided in s. 938.028 (2) (e),
16 means land in this state within the boundaries of the reservation of a tribe.

17 **SECTION 255.** 938.02 (18g) of the statutes is repealed.

18 **SECTION 256.** 938.02 (18j) of the statutes is created to read:

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

24 **SECTION 257.** 938.028 of the statutes is repealed and recreated to read:

SENATE BILL 288

1 **938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY.** In Indian
2 juvenile custody proceedings, the best interests of the Indian juvenile shall be
3 determined in accordance with the federal Indian Child Welfare Act, 25 USC 1901
4 to 1963, and the policy specified in s. 938.01 (3).

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

6 (a) “Extended family member” means a person who is defined as a member of
7 an Indian juvenile’s extended family by the law or custom of the Indian juvenile’s
8 tribe or, in the absence of such a law or custom, a person who has attained the age
9 of 18 years and who is the Indian juvenile’s grandparent, aunt, uncle, brother, sister,
10 brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

11 (b) “Indian juvenile custody proceeding” means a proceeding under s. 938.13
12 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC
13 1901 to 1963, in which an out-of-home care placement may occur.

14 (c) “Out-of-home care placement” means the removal of an Indian juvenile
15 from the home of his or her parent or Indian custodian for temporary placement in
16 a foster home, treatment foster home, group home, residential care center for
17 children and youth, or shelter care facility, in the home of a relative other than a
18 parent, or in the home of a guardian, from which placement the parent or Indian
19 custodian cannot have the juvenile returned upon demand. “Out-of-home care
20 placement” does not include holding an Indian juvenile in custody under ss. 938.19
21 to 938.21.

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

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

SENATE BILL 288

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

3 3. A professional person having substantial education and experience in the
4 person’s professional specialty and having substantial knowledge of the customs,
5 traditions, and values of the Indian juvenile’s tribe relating to family organization
6 and child-rearing practices.

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

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

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

24 (b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive
25 jurisdiction over any Indian juvenile custody proceeding involving an Indian

SENATE BILL 288

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

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

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

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

24 2. The Indian juvenile's tribe does not have a tribal court, or the tribal court of
25 the Indian juvenile's tribe declines jurisdiction.

SENATE BILL 288

1 3. The court determines that good cause exists to deny the transfer. In
2 determining whether good cause exists to deny the transfer, the court may not
3 consider any perceived inadequacy of the tribal social services department or the
4 tribal court of the Indian juvenile’s tribe. The court may determine that good cause
5 exists to deny the transfer only if the person opposing the transfer shows by clear and
6 convincing evidence that any of the following applies:

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

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

15 c. The Indian juvenile’s tribe received notice of the proceeding under sub. (4)
16 (a), the tribe has not indicated to the court in writing that the tribe is monitoring the
17 proceeding and may request a transfer at a later date, and because of gross
18 negligence the tribe has not petitioned for a transfer within 3 months after receiving
19 notice of the proceeding.

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

SENATE BILL 288

1 custody of the parent or Indian custodian, unless the court determines that returning
2 the Indian juvenile to his or her parent or Indian custodian would subject the Indian
3 juvenile to substantial and immediate danger or the threat of that danger.

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

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

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

SENATE BILL 288

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

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

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

16 (d) *Out-of-home care placement; serious damage and active efforts.* The court
17 may not order an Indian juvenile who is in need of protection or services under s.
18 938.13 (4), (6), (6m), or (7) to be removed from the home of the Indian juvenile's parent
19 or Indian custodian and placed in an out-of-home care placement unless all of the
20 following occur:

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

SENATE BILL 288

1 2. The court finds by clear and convincing evidence that active efforts, as
2 described in par. (f) 1., have been made to provide remedial services and
3 rehabilitation programs designed to prevent the breakup of the Indian juvenile's
4 family and that those efforts have proved unsuccessful. The court shall make that
5 finding notwithstanding that a circumstance specified in s. 938.355 (2d) (b) 1. to 4.
6 applies.

7 (e) *Qualified expert witness; order of preference.* 1. Any party to a proceeding
8 under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home placement of an Indian
9 juvenile may call a qualified expert witness. Subject to subd. 2., a qualified expert
10 witness shall be chosen in the following order of preference:

- 11 a. A member of the Indian juvenile's tribe described in sub. (2) (d) 1.
12 b. A member of another tribe described in sub. (2) (d) 2.
13 c. A professional person described in sub. (2) (d) 3.
14 d. A layperson described in sub. (2) (d) 4.

15 2. A qualified expert witness from a lower order of preference may be chosen
16 only if the party calling the qualified expert witness shows that it has made a diligent
17 effort to secure the attendance of a qualified expert witness from a higher order of
18 preference. A qualified expert witness from a lower order of preference may not be
19 chosen solely because a qualified expert witness from a higher order of preference is
20 able to participate in the Indian juvenile custody proceeding only by telephone or live
21 audiovisual means as prescribed in s. 807.13 (2). The fact that a qualified expert
22 witness called by one party is from a lower order of preference under subd. 1. than
23 a qualified expert witness called by another party may not be the sole consideration
24 in weighing the testimony and opinions of the qualified expert witnesses. The court
25 shall determine the qualifications of a qualified expert witness as provided in ch. 907.

SENATE BILL 288

1 (f) *Active efforts standard.* 1. The court may not order an Indian juvenile to
2 be removed from the home of the Indian juvenile’s parent or Indian custodian and
3 placed in an out-of-home care placement unless the evidence of active efforts under
4 par. (d) 2. shows that there has been an ongoing, vigorous, and concerted level of case
5 work and that the active efforts were made in a manner that takes into account the
6 prevailing social and cultural values, conditions, and way of life of the Indian
7 juvenile’s tribe and that utilizes the available resources of the Indian juvenile’s tribe,
8 tribal and other Indian child welfare agencies, extended family members of the
9 Indian juvenile, other individual Indian caregivers, and other culturally appropriate
10 service providers. The court’s consideration of whether active efforts were made
11 under par. (d) 2. shall include whether all of the following activities were conducted:

12 a. Representatives designated by the Indian juvenile’s tribe with substantial
13 knowledge of the prevailing social and cultural standards and child-rearing
14 practices within the tribal community were requested to evaluate the circumstances
15 of the Indian juvenile’s family and to assist in developing a case plan that uses the
16 resources of the tribe and of the Indian community, including traditional and
17 customary support, actions, and services, to address those circumstances.

18 am. A comprehensive assessment of the situation of the Indian juvenile’s
19 family was completed, including a determination of the likelihood of protecting the
20 Indian juvenile’s health, safety, and welfare effectively in the Indian juvenile’s home.

21 b. Representatives of the Indian juvenile’s tribe were identified, notified, and
22 invited to participate in all aspects of the Indian juvenile custody proceeding at the
23 earliest possible point in the proceeding and their advice was actively solicited
24 throughout the proceeding.

SENATE BILL 288

1 c. Extended family members of the Indian juvenile, including extended family
2 members who were identified by the Indian juvenile's tribe or parents, were notified
3 and consulted with to identify and provide family structure and support for the
4 Indian juvenile, to assure cultural connections, and to serve as placement resources
5 for the Indian juvenile.

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

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

15 f. Community resources offering housing, financial, and transportation
16 assistance and in-home support services, in-home intensive treatment services,
17 community support services, and specialized services for members of the Indian
18 juvenile's family with special needs were identified, information about those
19 resources was provided to the Indian juvenile's family, and the Indian juvenile's
20 family was actively assisted or offered active assistance in accessing those resources.

21 g. Monitoring of client progress and client participation in services was
22 provided.

23 h. A consideration of alternative ways of addressing the needs of the Indian
24 juvenile's family was provided, if services did not exist or if existing services were not
25 available to the family.

SENATE BILL 288

1 2. If any of the activities specified in subd. 1. a. to h. were not conducted, the
2 person seeking the out-of-home care placement shall submit documentation to the
3 court explaining why the activity was not conducted.

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

11 **(6) PLACEMENT OF INDIAN JUVENILE.** (a) *Out-of-home care placement;*
12 *preferences.* Any Indian juvenile in need of protection or services under s. 938.13 (4),
13 (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in
14 the least restrictive setting that most approximates a family, that meets the Indian
15 juvenile's special needs, if any, and that is within reasonable proximity to the Indian
16 juvenile's home, taking into account those special needs. Subject to pars. (b) to (d),
17 in placing such an Indian juvenile in an out-of-home care placement, preference
18 shall be given, in the absence of good cause, as described in par. (d), to the contrary,
19 to a placement in one of the following, in the order of preference listed:

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

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

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

SENATE BILL 288

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

4 (am) *Temporary physical custody; preferences.* Any Indian juvenile in need of
5 protection or services under s. 938.13 (4), (6), (6m), or (7) who is being held in
6 temporary physical custody under s. 938.205 (1) shall be placed in compliance with
7 par. (a) or, if applicable, par. (b), unless the person responsible for determining the
8 placement finds good cause, as described in par. (d), for departing from the order of
9 placement preference under par. (a) or finds that emergency conditions necessitate
10 departing from that order. When the reason for departing from that order is resolved,
11 the Indian juvenile shall be placed in compliance with the order of placement
12 preference under par. (a) or, if applicable, par. (b).

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

22 (c) *Social and cultural standards.* The standards to be applied in meeting the
23 placement preference requirements of this subsection shall be the prevailing social
24 and cultural standards of the Indian community in which the Indian juvenile's

SENATE BILL 288

1 parents or extended family members reside or with which the Indian juvenile's
2 parents or extended family members maintain social and cultural ties.

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

6 a. When appropriate, the request of the Indian juvenile's parent or, if the Indian
7 juvenile is of sufficient age and developmental level to make an informed decision,
8 the Indian juvenile, unless the request is made for the purpose of avoiding the
9 application of this section and the federal Indian Child Welfare Act, 25 USC 1901 to
10 1963.

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

16 c. The unavailability of a suitable placement for the Indian juvenile after
17 diligent efforts have been made to place the Indian juvenile in the order of preference
18 under par. (a) or (b).

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

21 (e) *Report of placement.* A county department or a child welfare agency shall
22 maintain a record of each out-of-home care placement made of an Indian juvenile
23 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), evidencing
24 the efforts made to comply with the placement preference requirements specified in

SENATE BILL 288

1 this subsection, and shall make that record available at any time on the request of
2 the U.S. secretary of the interior or the Indian juvenile's tribe.

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

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

18 **SECTION 258.** 938.028 (2) (c) of the statutes, as affected by 2009 Wisconsin Act
19 (this act), is amended to read:

20 938.028 (2) (c) "Out-of-home care placement" means the removal of an Indian
21 juvenile from the home of his or her parent or Indian custodian for temporary
22 placement in a foster home, ~~treatment foster home~~, group home, residential care
23 center for children and youth, or shelter care facility, in the home of a relative other
24 than a parent, or in the home of a guardian, from which placement the parent or
25 Indian custodian cannot have the juvenile returned upon demand. "Out-of-home

SENATE BILL 288

1 care placement” does not include holding an Indian juvenile in custody under ss.
2 938.19 to 938.21.

3 **SECTION 259.** 938.028 (6) (a) 2. and 3. of the statutes, as affected by 2009
4 Wisconsin Act (this act), are amended to read:

5 938.028 (6) (a) 2. A foster home ~~or treatment foster home~~ licensed, approved,
6 or specified by the Indian juvenile’s tribe.

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

9 **SECTION 260.** 938.13 (intro.) of the statutes is amended to read:

10 **938.13 Jurisdiction over juveniles alleged to be in need of protection**
11 **or services.** (intro.) ~~The~~ Except as provided in s. 938.028 (3), the court has exclusive
12 original jurisdiction over a juvenile alleged to be in need of protection or services
13 which can be ordered by the court if any of the following conditions applies:

14 **SECTION 261.** 938.15 of the statutes is amended to read:

15 **938.15 Jurisdiction of other courts to determine legal custody.** ~~Nothing~~
16 Except as provided in s. 938.028 (3), ~~nothing~~ in this chapter deprives another court
17 of the right to determine the legal custody of a juvenile by habeas corpus or to
18 determine the legal custody or guardianship of a juvenile if the legal custody or
19 guardianship is incidental to the determination of an action pending in that court.
20 ~~But~~ Except as provided in s. 938.028 (3), the jurisdiction of the court assigned to
21 exercise jurisdiction under this chapter and ch. 48 is paramount in all cases involving
22 juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

23 **SECTION 262.** 938.185 (4) (title) of the statutes is amended to read:

24 938.185 (4) (title) ~~AMERICAN INDIAN JUVENILES.~~

25 **SECTION 263.** 938.185 (4) (intro.) of the statutes is amended to read:

SENATE BILL 288

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

5 **SECTION 264.** 938.185 (4) (a) of the statutes is amended to read:

6 938.185 (4) (a) At the time of the alleged delinquent act the juvenile was under
7 an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
8 physical placement or visitation with the juvenile's parent, or permanent
9 guardianship.

10 **SECTION 265.** 938.185 (4) (b) of the statutes is amended to read:

11 938.185 (4) (b) At the time of the alleged delinquent act the juvenile was
12 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
13 of the tribal court and any off-reservation trust land of either that Indian tribe or a
14 member of that Indian tribe as a direct consequence of a tribal court order under par.
15 (a), including a tribal court order placing the juvenile in the home of a relative of the
16 juvenile who on or after the date of the tribal court order resides physically outside
17 the boundaries of a reservation and off-reservation trust land.

18 **SECTION 266.** 938.19 (2) of the statutes is amended to read:

19 938.19 (2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
20 CUSTODIAN. When a juvenile is taken into physical custody under this section, the
21 person taking the juvenile into custody shall immediately attempt to notify the
22 parent, guardian, and legal custodian, and Indian custodian of the juvenile by the
23 most practical means. The person taking the juvenile into custody shall continue
24 such attempt until the parent, guardian, and legal custodian, and Indian custodian
25 of the juvenile are notified, or the juvenile is delivered to an intake worker under s.

SENATE BILL 288

1 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker
2 before the parent, guardian, and legal custodian, and Indian custodian are notified,
3 the intake worker, or another person at his or her direction, shall continue the
4 attempt to notify until the parent, guardian, and legal custodian, and Indian
5 custodian of the juvenile are notified.

6 **SECTION 267.** 938.20 (2) (ag) of the statutes is amended to read:

7 938.20 (2) (ag) Except as provided in pars. (b) to (g), a person taking a juvenile
8 into custody shall make every effort to release the juvenile immediately to the
9 juvenile's parent, guardian or, legal custodian, or Indian custodian.

10 **SECTION 268.** 938.20 (2) (b) of the statutes is amended to read:

11 938.20 (2) (b) If the juvenile's parent, guardian or, legal custodian, or Indian
12 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
13 the person who took the juvenile into custody may release the juvenile to a
14 responsible adult after counseling or warning the juvenile as may be appropriate.

15 **SECTION 269.** 938.20 (3) of the statutes is amended to read:

16 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
17 CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the
18 person who took the juvenile into custody shall immediately notify the juvenile's
19 parent, guardian, and legal custodian, and Indian custodian of the time and
20 circumstances of the release and the person, if any, to whom the juvenile was
21 released. If the juvenile is not released under sub. (2), the person who took the
22 juvenile into custody shall arrange in a manner determined by the court and law
23 enforcement agencies for the juvenile to be interviewed by the intake worker under
24 s. 938.067 (2). The person who took the juvenile into custody shall make a statement
25 in writing with supporting facts of the reasons why the juvenile was taken into

SENATE BILL 288

1 physical custody and shall give a copy of the statement to the intake worker and to
2 any juvenile 10 years of age or older. If the intake interview is not done in person,
3 the report may be read to the intake worker.

4 **SECTION 270.** 938.20 (7) (c) 1. of the statutes is amended to read:

5 938.20 (7) (c) 1. To a parent, guardian, ~~or~~ legal custodian, or Indian custodian,
6 or to a responsible adult if the parent, guardian, ~~or~~ legal custodian, or Indian
7 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
8 counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15
9 years of age or older, without immediate adult supervision, counseling or warning
10 the juvenile as may be appropriate.

11 **SECTION 271.** 938.20 (7) (d) of the statutes is amended to read:

12 938.20 (7) (d) If the juvenile is released from custody, the intake worker shall
13 immediately notify the juvenile's parent, guardian ~~and~~, legal custodian, and Indian
14 custodian of the time and circumstances of the release and the person, if any, to whom
15 the juvenile was released.

16 **SECTION 272.** 938.20 (8) (a) of the statutes is amended to read:

17 938.20 (8) (a) If a juvenile is held in custody, the intake worker shall notify the
18 juvenile's parent, guardian, ~~and~~ legal custodian, and Indian custodian of the reasons
19 for holding the juvenile in custody and of the juvenile's whereabouts unless there is
20 reason to believe that notice would present imminent danger to the juvenile. The
21 parent, guardian, ~~and~~ legal custodian, and Indian custodian shall also be notified of
22 the time and place of the detention hearing required under s. 938.21, the nature and
23 possible consequences of the hearing, ~~and~~ the right to present and cross-examine
24 witnesses at the hearing, ~~and~~, in the case of a parent or Indian custodian of an Indian
25 juvenile who is the subject of an Indian juvenile custody proceeding, as defined in s.

SENATE BILL 288

1 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b). If the parent, guardian,
2 or legal custodian, or Indian custodian is not immediately available, the intake
3 worker or another person designated by the court shall provide notice as soon as
4 possible.

5 **SECTION 273.** 938.207 (1g) of the statutes is created to read:

6 938.207 (1g) INDIAN JUVENILE; PLACEMENT PREFERENCES. An Indian juvenile in
7 need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is held in
8 physical custody under s. 938.205 (1) shall be placed in compliance with s. 938.028
9 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the person responsible for
10 determining the placement finds good cause, as described in s. 938.028 (6) (d), for
11 departing from the order of placement preference under s. 938.028 (6) (a) or finds that
12 emergency conditions necessitate departing from that order. When the reason for
13 departing from that order is resolved, the Indian juvenile shall be placed in
14 compliance with the order of placement preference under s. 938.028 (6) (a) or, if
15 applicable, s. 938.028 (6) (b).

16 **SECTION 274.** 938.21 (2) (title) of the statutes is amended to read:

17 938.21 (2) (title) PROCEEDINGS CONCERNING ~~RUNAWAY OR DELINQUENT~~ JUVENILES.

18 **SECTION 275.** 938.21 (2) (ag) of the statutes is amended to read:

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

22 **SECTION 276.** 938.21 (3) (ag) of the statutes is amended to read:

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

SENATE BILL 288

1 **SECTION 277.** 938.21 (3) (am) of the statutes is amended to read:

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

6 **SECTION 278.** 938.21 (3) (b) of the statutes is amended to read:

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

13 **SECTION 279.** 938.21 (3) (d) of the statutes is amended to read:

14 938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
15 the parent, guardian, ~~or~~ legal custodian, or Indian custodian of the allegations that
16 have been made or may be made, the nature and possible consequences of this
17 hearing as compared to possible future hearings, the right to present, confront, and
18 cross-examine witnesses, ~~and the right to present witnesses~~ and, in the case of a
19 parent or Indian custodian of an Indian juvenile who is the subject of an Indian
20 juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under
21 s. 938.028 (4) (b).

22 **SECTION 280.** 938.21 (3) (e) of the statutes is amended to read:

23 938.21 (3) (e) If the parent, guardian, ~~or~~ legal custodian, Indian custodian, or
24 ~~the~~ juvenile is not represented by counsel at the hearing and if the juvenile is
25 continued in custody as a result of the hearing, the parent, guardian, legal custodian,

SENATE BILL 288

1 Indian custodian, or juvenile may request through counsel subsequently appointed
2 or retained or through a guardian ad litem that the order to hold the juvenile in
3 custody be reheard. If the request is made, a rehearing shall take place as soon as
4 possible. An order to hold the juvenile in custody shall be reheard for good cause,
5 whether or not counsel was present.

6 **SECTION 281.** 938.21 (5) (d) 1. of the statutes is renumbered 938.21 (5) (d) and
7 amended to read:

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

14 **SECTION 282.** 938.21 (5) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
15 28, is repealed.

16 **SECTION 283.** 938.21 (5) (d) 3. of the statutes, as affected by 2009 Wisconsin Act
17 28, is repealed.

18 **SECTION 284.** 938.23 (2g) of the statutes is created to read:

19 938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.
20 Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6),
21 (6m), or (7) involving the removal of the Indian juvenile from the home of his or her
22 parent or Indian custodian or the placement of the Indian juvenile in an out-of-home
23 care placement, the Indian juvenile's parent or Indian custodian shall have the right
24 to be represented by counsel as provided in sub. (4).

25 **SECTION 285.** 938.23 (3) of the statutes is amended to read:

SENATE BILL 288

1 938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. Except as provided in this
2 subsection, at any time, upon request or on its own motion, the court may appoint
3 counsel for the juvenile or any party, unless the juvenile or the party has or wishes
4 to retain counsel of his or her own choosing. The Except as provided in sub. (2g), the
5 court may not appoint counsel for any party other than the juvenile in a proceeding
6 under s. 938.13.

7 **SECTION 286.** 938.23 (4) of the statutes is amended to read:

8 938.23 (4) PROVIDING COUNSEL. If a juvenile has a right to be represented by
9 counsel or is provided counsel at the discretion of the court under this section and
10 counsel is not knowingly and voluntarily waived, the court shall refer the juvenile
11 to the state public defender and counsel shall be appointed by the state public
12 defender under s. 977.08 without a determination of indigency. In any situation
13 under sub. (2g) in which a parent 18 years of age or over is entitled to representation
14 by counsel; counsel is not knowingly and voluntarily waived; and it appears that the
15 parent is unable to afford counsel in full, or the parent so indicates; the court shall
16 refer the parent to the authority for indigency determinations specified under s.
17 977.07 (1). In any other situation under this section in which a person has a right
18 to be represented by counsel or is provided counsel at the discretion of the court,
19 competent and independent counsel shall be provided and reimbursed in any
20 manner suitable to the court regardless of the person's ability to pay, except that the
21 court may not order a person who files a petition under s. 813.122 or 813.125 to
22 reimburse counsel for the juvenile who is named as the respondent in that petition.

23 **SECTION 287.** 938.235 (4) (a) 7. of the statutes is amended to read:

24 938.235 (4) (a) 7. Petition for relief from a judgment terminating parental
25 rights under s. 48.028 or 48.46.

SENATE BILL 288

1 **SECTION 288.** 938.24 (2r) (title) of the statutes is amended to read:

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

3 **SECTION 289.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

4 938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake
5 inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly
6 committed a delinquent act and that all of the following circumstances apply, the
7 intake worker shall promptly notify the clerk of the tribal court under subd. 1., a
8 person who serves as the tribal juvenile intake worker, or a tribal prosecuting
9 attorney that the juvenile has allegedly committed a delinquent act under those
10 circumstances:

11 **SECTION 290.** 938.24 (2r) (a) 1. of the statutes is amended to read:

12 938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an
13 order of a tribe's tribal court, other than a tribal court order relating to adoption,
14 physical placement or visitation with the juvenile's parent, or permanent
15 guardianship.

16 **SECTION 291.** 938.24 (2r) (a) 2. of the statutes is amended to read:

17 938.24 (2r) (a) 2. At the time of the delinquent act the juvenile was physically
18 outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe of the tribal
19 court and any off-reservation trust land of either that Indian tribe or a member of
20 that Indian tribe as a direct consequence of a tribal court order under subd. 1.,
21 including a tribal court order placing the juvenile in the home of a relative of the
22 juvenile who on or after the date of the tribal court order resides physically outside
23 the boundaries of a reservation and off-reservation trust land.

24 **SECTION 292.** 938.24 (2r) (b) of the statutes is amended to read:

SENATE BILL 288

1 938.24 (2r) (b) If the intake worker is notified by an official of the Indian tribe
2 that a petition relating to the delinquent act has been or may be filed in tribal court,
3 the intake worker shall consult with tribal officials, unless the intake worker
4 determines under sub. (4) that the case should be closed. After the consultation, the
5 intake worker shall determine whether the best interests of the juvenile and of the
6 public would be served by having the matter proceed solely in tribal court. If the
7 intake worker determines that the best interests of the juvenile and of the public
8 would be served by having the matter proceed solely in tribal court, the intake
9 worker shall close the case. If the intake worker determines that the best interests
10 of the juvenile and of the public would not be served by having the matter proceed
11 solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

12 **SECTION 293.** 938.243 (1) (e) of the statutes is amended to read:

13 938.243 (1) (e) The right of ~~the juvenile~~ to counsel under s. 938.23.

14 **SECTION 294.** 938.25 (2g) (title) of the statutes is amended to read:

15 938.25 (2g) (title) ~~AMERICAN INDIAN JUVENILE; CONSULTATION WITH TRIBAL COURT.~~

16 **SECTION 295.** 938.255 (1) (cm) of the statutes is amended to read:

17 938.255 (1) (cm) If the petition is initiating proceedings ~~other than proceedings~~
18 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether
19 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to
20 1963, and, if the juvenile may be subject to that act, the names and addresses of the
21 juvenile's Indian custodian, if any, and Indian tribe, if known.

22 **SECTION 296.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

23 938.255 (1) (cr) 1. a. The juvenile is an ~~American~~ Indian juvenile.

24 **SECTION 297.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

SENATE BILL 288

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

5 **SECTION 298.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

6 938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was
7 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
8 of the tribal court and any off-reservation trust land of either that Indian tribe or a
9 member of that Indian tribe as a direct consequence of a tribal court order under
10 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative
11 of the juvenile who on or after the date of the tribal court order resides physically
12 outside the boundaries of a reservation and off-reservation trust land.

13 **SECTION 299.** 938.255 (1) (cr) 2. of the statutes is amended to read:

14 938.255 (1) (cr) 2. If the statement under subd. 1. is included in the petition and
15 if the intake worker, district attorney, or corporation counsel has been notified by an
16 official of the Indian tribe that a petition relating to the delinquent act has been or
17 may be filed in tribal court with respect to the alleged delinquent act, a statement
18 to that effect.

19 **SECTION 300.** 938.255 (1) (g) of the statutes is created to read:

20 938.255 (1) (g) If the petitioner knows or has reason to know that the juvenile
21 is an Indian juvenile, if the juvenile is alleged to come within the provisions of s.
22 938.13 (4), (6), (6m), or (7), and if the juvenile has been removed from the home of his
23 or her parent or Indian custodian, reliable and credible information showing that
24 continued custody of the juvenile by the juvenile's parent or Indian custodian is likely
25 to result in serious emotional or physical damage to the juvenile under s. 938.028 (4)

SENATE BILL 288

1 (d) 1. and reliable and credible information showing that active efforts under s.
2 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's
3 family and that those efforts have proved unsuccessful. The petition shall set forth
4 with specificity both the information required under this paragraph and the
5 information required under par. (f).

6 **SECTION 301.** 938.255 (2) of the statutes is amended to read:

7 938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~, (f), and (g) are not known
8 or cannot be ascertained by the petitioner, the petition shall so state.

9 **SECTION 302.** 938.255 (4) of the statutes is amended to read:

10 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall
11 be given to the juvenile and to the parents, guardian, legal custodian and physical
12 custodian. If the juvenile is an Indian juvenile who is alleged to come within the
13 provisions of s. 938.13 (4), (6), (6m), or (7), and who has been removed from the home
14 of his or her parent or Indian custodian, a copy of the petition shall also be given to
15 the Indian juvenile's Indian custodian and tribe.

16 **SECTION 303.** 938.27 (3) (a) 1. of the statutes is amended to read:

17 938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any
18 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
19 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and
20 any person specified in par. (b) or (d), if applicable, of all hearings involving the
21 juvenile under this subchapter, except hearings on motions for which notice must be
22 provided only to the juvenile and his or her counsel. If parents entitled to notice have
23 the same place of residence, notice to one constitutes notice to the other. The first
24 notice to any interested party, foster parent, treatment foster parent, or other
25 physical custodian described in s. 48.62 (2) shall be in writing and may have a copy

SENATE BILL 288

1 of the petition attached to it. Notices of subsequent hearings may be given by
2 telephone at least 72 hours before the time of the hearing. The person giving
3 telephone notice shall place in the case file a signed statement of the date and time
4 notice was given and the person to whom he or she spoke.

5 **SECTION 304.** 938.27 (3) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts
6 28 and (this act), is repealed and recreated to read:

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

20 **SECTION 305.** 938.27 (3) (d) of the statutes is created to read:

21 938.27 (3) (d) If the petition that was filed relates to facts concerning a situation
22 under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile who has been
23 removed from the home of his or her parent or Indian custodian, the court shall notify,
24 under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian
25 custodian or tribe may intervene at any point in the proceeding.

SENATE BILL 288

1 **SECTION 306.** 938.27 (4) (b) of the statutes is amended to read:

2 938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or
3 her right to legal counsel regardless of ability to pay.

4 **SECTION 307.** 938.273 (1) (a) of the statutes of the statutes is amended to read:

5 938.273 (1) (a) ~~Service~~ Except as provided in pars. (ag), (ar), and (b), service of
6 summons or notice required by s. 938.27 may be made by mailing a copy of the
7 summons or notice to the persons person summoned or notified. If

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

15 **SECTION 308.** 938.273 (1) (ag) of the statutes is created to read:

16 938.273 (1) (ag) In a situation described in s. 938.27 (3) (d), service of summons
17 or notice required by s. 938.27 to an Indian juvenile's parent, Indian custodian, or
18 tribe shall be made as provided in s. 938.028 (4) (a).

19 **SECTION 309.** 938.273 (1) (b) of the statutes is amended to read:

20 938.273 (1) (b) The court may refuse to grant a continuance when the juvenile
21 is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that
22 service of notice of the next hearing be made personally or by certified mail to the
23 last-known address of the person who failed to appear at the hearing.

24 **SECTION 310.** 938.273 (1) (c) of the statutes is renumbered 938.273 (1) (c)
25 (intro.) and amended to read:

SENATE BILL 288

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

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

6 **SECTION 311.** 938.273 (1) (c) 2. of the statutes is created to read:

7 938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves
8 an Indian juvenile who has been removed from the home of his or her parent or
9 Indian custodian and the person to be notified is the Indian juvenile’s parent, Indian
10 custodian, or tribe, the mail shall be sent so that it is received by the person to be
11 notified at least 10 days before the hearing or, if the identity or location of the person
12 to be notified cannot be determined by the U.S. secretary of the interior at least 10
13 days before the hearing.

14 **SECTION 312.** 938.299 (6) (d) of the statutes is amended to read:

15 938.299 (6) (d) The court may stay the proceedings under this chapter pending
16 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
17 determines that the paternity proceedings will not unduly delay the proceedings
18 under this chapter and the determination of paternity is necessary to the court’s
19 disposition of the juvenile if the juvenile is found to be in need of protection or services
20 or if the court determines or has reason to know that the paternity proceedings may
21 result in a finding that the juvenile is an Indian juvenile and in a petition by the
22 juvenile’s parent, Indian custodian, or tribe for transfer of the proceeding to the
23 jurisdiction of the tribe.

24 **SECTION 313.** 938.299 (9) (title) of the statutes is amended to read:

25 938.299 (9) (title) ~~AMERICAN~~ INDIAN JUVENILE; TRIBAL COURT INVOLVEMENT.

SENATE BILL 288

1 **SECTION 314.** 938.299 (9) (a) of the statutes is amended to read:

2 938.299 **(9)** (a) If a petition under s. 938.12 or 938.13 (12) includes the
3 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under
4 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed
5 in a ~~tribe's~~ tribal court with respect to a juvenile to whom the circumstances specified
6 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate
7 with the tribal court in which the other proceeding is or may be pending to discuss
8 which court is the more appropriate forum.

9 **SECTION 315.** 938.299 (10) of the statutes is created to read:

10 938.299 **(10)** If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)
11 the court determines or has reason to know that the juvenile is an Indian juvenile,
12 the court shall provide notice of the proceeding to the juvenile's parent, Indian
13 custodian, and tribe in the manner specified in s. 938.028 (4) (a). The next hearing
14 in the proceeding may not be held until at least 10 days after receipt of the notice by
15 the parent, Indian custodian, and tribe or, if the identity or location of the parent,
16 Indian custodian, or tribe cannot be determined, until at least 10 days after receipt
17 of the notice by the U.S. secretary of the interior. On request of the parent, Indian
18 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
19 to enable the requester to prepare for that hearing.

20 **SECTION 316.** 938.30 (1) of the statutes is amended to read:

21 938.30 **(1)** TIME OF HEARING. Except as provided in this subsection and s.
22 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition
23 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party
24 wishes to contest an allegation that the juvenile is in need of protection or services
25 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows

SENATE BILL 288

1 reasonable time for the parties to prepare but is within 30 days after the filing of a
2 petition or issuance of a citation for a juvenile who is not being held in secure custody
3 or within 10 days after the filing of a petition or issuance of a citation for a juvenile
4 who is being held in secure custody. In a municipal court operated jointly by 2 or more
5 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's
6 plea shall take place within 45 days after the filing of a petition or issuance of a
7 citation for a juvenile who is not being held in secure custody.

8 **SECTION 317.** 938.30 (2) of the statutes is amended to read:

9 **938.30 (2)** INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.

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

17 **SECTION 318.** 938.30 (6) (a) of the statutes is amended to read:

18 **938.30 (6)** (a) If a petition is not contested, the court, subject to s. 938.299 (10),
19 shall set a date for the dispositional hearing which allows reasonable time for the
20 parties to prepare but is no more than 10 days from the plea hearing for a juvenile
21 who is held in secure custody and no more than 30 days from the plea hearing for a
22 juvenile who is not held in secure custody. If Subject to s. 938.299 (10), if all parties
23 consent, the court may proceed immediately with the dispositional hearing. If a
24 citation is not contested, the court may proceed immediately to enter a dispositional
25 order.

SENATE BILL 288

1 **SECTION 319.** 938.30 (7) of the statutes is amended to read:

2 **938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.**

3 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set
4 a date for the fact-finding hearing that allows a reasonable time for the parties to
5 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who
6 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for
7 a juvenile who is not held in secure custody.

8 **SECTION 320.** 938.305 of the statutes is amended to read:

9 **938.305 Hearing upon the involuntary removal of a juvenile.**

10 Notwithstanding other time periods for hearings under this chapter, if a juvenile is
11 removed from the physical custody of the juvenile's parent or guardian under s.
12 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject
13 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30
14 days after a request from the parent or guardian from whom custody was removed.
15 The plea hearing and fact-finding hearing may be combined. This time period may
16 be extended only with the consent of the requesting parent or guardian.

17 **SECTION 321.** 938.31 (5) of the statutes is created to read:

18 **938.31 (5)** If the juvenile is an Indian juvenile in need of protection or services
19 under s. 938.13 (4), (6), (6m), or (7), the court shall also determine at the fact-finding
20 hearing whether continued custody of the Indian juvenile by the Indian juvenile's
21 parent or Indian custodian is likely to result in serious emotional or physical damage
22 to the Indian juvenile under s. 938.028 (4) (d) 1. and whether active efforts under s.
23 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's
24 family and whether those efforts have proved unsuccessful, unless partial summary

SENATE BILL 288

1 judgment on the allegations under s. 938.13 (4), (6), (6m), or (7) is granted, in which
2 case the court shall make those determinations at the dispositional hearing.

3 **SECTION 322.** 938.31 (7) (a) of the statutes is amended to read:

4 938.31 (7) (a) At the close of the fact-finding hearing, the court, subject to s.
5 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable
6 time for the parties to prepare but is no more than 10 days after the fact-finding
7 hearing for a juvenile in secure custody and no more than 30 days after the
8 fact-finding hearing for a juvenile not held in secure custody. ~~If Subject to s. 938.299~~
9 ~~(10), if~~ all parties consent, the court may immediately proceed with a dispositional
10 hearing.

11 **SECTION 323.** 938.315 (1) (a) 11. of the statutes is created to read:

12 938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request
13 of the parent, Indian custodian, or tribe of a juvenile whom the court knows or has
14 reason to know is an Indian juvenile to enable the requester to prepare for a
15 proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care
16 placement of the juvenile.

17 **SECTION 324.** 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and
18 amended to read:

19 938.32 (1) (d) If the court finds that any of the circumstances specified in s.
20 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
21 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
22 permanency plan for the juvenile. ~~The agency responsible for preparing the~~
23 ~~permanency plan shall file the permanency plan with the court not less than 5 days~~
24 ~~before the date of the hearing.~~

SENATE BILL 288

1 **SECTION 325.** 938.32 (1) (d) 2. of the statutes, as affected by 2009 Wisconsin Act
2 28, is repealed.

3 **SECTION 326.** 938.32 (1) (d) 3. of the statutes, as affected by 2009 Wisconsin Act
4 28, is repealed.

5 **SECTION 327.** 938.32 (1) (e) of the statutes is created to read:

6 938.32 (1) (e) 1. In the case of an Indian juvenile who is the subject of a
7 proceeding under s. 938.13 (4), (6), (6m), or (7), if at the time the consent decree is
8 entered into the Indian juvenile is placed outside the home of his or her parent or
9 Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living
10 outside that home without a court order and if the consent decree maintains the
11 Indian juvenile in that placement or other living arrangement, the consent decree
12 shall include a finding supported by clear and convincing evidence, including the
13 testimony of one or more qualified expert witnesses, that continued custody of the
14 Indian juvenile by the parent or Indian custodian is likely to result in serious
15 emotional or physical damage to the child under s. 938.028 (4) (d) 1. and a finding
16 that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the breakup
17 of the Indian juvenile's family and that those efforts have proved unsuccessful. The
18 findings under this subdivision shall be in addition to the findings under par. (c) 1.,
19 except that for the sole purpose of determining whether the cost of providing care for
20 an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the
21 findings under this subdivision and the findings under par. (c) 1. shall be considered
22 to be the same findings.

23 2. If the placement or other living arrangement under subd. 1. departs from the
24 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)

SENATE BILL 288

1 (b), the court shall also find good cause, as described in s. 938.028 (6) (d), for departing
2 from that order.

3 **SECTION 328.** 938.33 (4) (d) of the statutes is created to read:

4 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),
5 if the agency knows or has reason to know that the juvenile is an Indian juvenile who
6 is being removed from the home of his or her parent or Indian custodian, a description
7 of any efforts undertaken to determine whether the juvenile is an Indian juvenile;
8 specific information showing that continued custody of the juvenile by the parent or
9 Indian custodian is likely to result in serious emotional or physical damage to the
10 juvenile, under s. 938.028 (4) (d) 1.; specific information showing that active efforts
11 under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
12 juvenile's family and that those efforts have proved unsuccessful; a statement as to
13 whether the out-of-home care placement recommended is in compliance with the
14 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)
15 (b); and, if the recommended placement is not in compliance with that order, specific
16 information showing good cause, as described in s. 938.028 (6) (d), for departing from
17 that order.

18 **SECTION 329.** 938.335 (3j) of the statutes is created to read:

19 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this
20 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13
21 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending
22 removal of the Indian juvenile from the home of his or her parent or Indian custodian
23 and placement of the Indian juvenile in a foster home, treatment foster home, group
24 home, or residential care center for children and youth or in the home of a relative

SENATE BILL 288

1 other than a parent, the agency shall present as evidence specific information
2 showing all of the following:

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

6 (b) That active efforts under s. 938.028 (4) (d) 2. have been made to prevent the
7 breakup of the Indian juvenile's family and that those efforts have proved
8 unsuccessful.

9 (c) That the placement recommended is in compliance with the order of
10 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or,
11 if that placement is not in compliance with that order, good cause, as described in s.
12 938.028 (6) (d), for departing from that order.

13 **SECTION 330.** 938.335 (3j) (intro.) of the statutes, as created by 2009 Wisconsin
14 Act (this act), is amended to read:

15 938.335 (3j) (intro.) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under
16 this section involving an Indian juvenile who is the subject of a proceeding under s.
17 938.13 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is
18 recommending removal of the Indian juvenile from the home of his or her parent or
19 Indian custodian and placement of the Indian juvenile in a foster home, ~~treatment~~
20 ~~foster home~~, group home, or residential care center for children and youth or in the
21 home of a relative other than a parent, the agency shall present as evidence specific
22 information showing all of the following:

23 **SECTION 331.** 938.345 (1m) of the statutes is created to read:

24 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.
25 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or

SENATE BILL 288

1 services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home
2 of his or her parent or Indian custodian and placed outside that home, the court shall
3 designate one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement
4 for the Indian juvenile, in the order of preference listed, unless the court finds good
5 cause, as described in s. 938.028 (6) (d), for departing from that order.

6 **SECTION 332.** 938.355 (2) (b) 6v. of the statutes is created to read:

7 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of
8 protection or services under s. 938.13 (4), (6), (6m), or (7) and who is being removed
9 from the home of his or her parent or Indian custodian and placed outside that home,
10 a finding supported by clear and convincing evidence, including the testimony of one
11 or more qualified expert witnesses, that continued custody of the Indian juvenile by
12 the parent or Indian custodian is likely to result in serious emotional or physical
13 damage to the juvenile under s. 938.028 (4) (d) 1. and a finding that active efforts
14 under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
15 juvenile’s family and that those efforts have proved unsuccessful. The findings
16 under this subdivision shall be in addition to the findings under subd. 6., except that
17 for the sole purpose of determining whether the cost of providing care for an Indian
18 juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under
19 this subdivision and the findings under subd. 6. shall be considered to be the same
20 findings. The findings under this subdivision are not required if they were made in
21 a previous order in the proceeding unless a change in circumstances warrants new
22 findings.

23 **SECTION 333.** 938.355 (2) (d) of the statutes is amended to read:

24 938.355 (2) (d) The court shall provide a copy of the dispositional order to the
25 juvenile’s parent, guardian, legal custodian, or trustee and, if the juvenile is an

SENATE BILL 288

1 Indian juvenile who has been removed from the home of his or her parent or Indian
2 custodian and placed outside that home under s. 938.13 (4), (6), (6m), or (7), to the
3 Indian juvenile's Indian custodian and tribe.

4 **SECTION 334.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)
5 and amended to read:

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

12 **SECTION 335.** 938.355 (2d) (c) 2. of the statutes, as affected by 2009 Wisconsin
13 Act 28, is repealed.

14 **SECTION 336.** 938.355 (2d) (c) 3. of the statutes, as affected by 2009 Wisconsin
15 Act 28, is repealed.

16 **SECTION 337.** 938.355 (2d) (d) of the statutes is created to read:

17 938.355 (2d) (d) This subsection does not affect the requirement under sub. (2)
18 (b) 6v. that the court include in a dispositional order removing an Indian juvenile who
19 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from the home
20 of his or her parent or Indian custodian and placing the juvenile outside that home
21 a finding that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the
22 breakup of the Indian juvenile's family and that those efforts have proved
23 unsuccessful.

24 **SECTION 338.** 938.355 (6) (an) 1. of the statutes is amended to read:

SENATE BILL 288

1 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other
2 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a
3 dispositional order imposed by the municipal court, the municipal court may petition
4 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose
5 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with
6 monitoring by an electronic monitoring system. A sanction may be imposed under
7 this subdivision only if, at the time of the judgment, the municipal court explained
8 the conditions to the juvenile and informed the juvenile of those possible sanctions
9 for a violation or if before the violation the juvenile has acknowledged in writing that
10 he or she has read, or has had read to him or her, those conditions and possible
11 sanctions and that he or she understands those conditions and possible sanctions.
12 The petition shall contain a statement of whether the juvenile may be subject to the
13 federal Indian Child Welfare Act, 25 USC ~~1911~~ 1901 to 1963, and, if the juvenile may
14 be subject to that act, the names and addresses of the juvenile's Indian custodian, if
15 any, and tribe, if known.

16 **SECTION 339.** 938.355 (6) (b) of the statutes is amended to read:

17 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction
18 may be brought by the person or agency primarily responsible for the provision of
19 dispositional services, the district attorney or corporation counsel, or the court that
20 entered the dispositional order. If the court initiates the motion, that court is
21 disqualified from holding a hearing on the motion. Notice of the motion shall be given
22 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all
23 parties present at the original dispositional hearing. The motion shall contain a
24 statement of whether the juvenile may be subject to the federal Indian Child Welfare

SENATE BILL 288

1 Act, 25 USC ~~1911~~ 1901 to 1963 and, if the juvenile may be subject to that act, the
2 names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

3 **SECTION 340.** 938.355 (6) (bm) of the statutes is created to read:

4 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion
5 knows or has reason to know that the juvenile is an Indian juvenile who has been
6 found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who
7 has been adjudged to have violated a civil law or ordinance, other than an ordinance
8 enacted under s. 118.163 (1m) or (2), and if the motion is seeking removal of the
9 juvenile from the home of his or her parent or Indian custodian and placement of the
10 juvenile in a place of nonsecure custody specified in par. (d) 1., notice under par. (b)
11 to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028
12 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
13 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
14 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or,
15 if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe
16 cannot be determined, until at least 10 days after receipt of the notice by the U.S.
17 secretary of the interior. On request of the Indian juvenile's parent, Indian
18 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
19 to enable the requester to prepare for the hearing.

20 **SECTION 341.** 938.355 (6) (cr) of the statutes is created to read:

21 938.355 (6) (cr) *Indian juvenile; findings.* In the case of an Indian juvenile who
22 has been found to be in need of protection or services under s. 938.13 (4), (6m), or (7)
23 or who has been adjudged to have violated a civil law or ordinance, other than an
24 ordinance enacted under s. 118.163 (1m) or (2), the court may not order the sanction
25 of removal from the home of the Indian juvenile's parent or Indian custodian and

SENATE BILL 288

1 placement in a place of nonsecure custody specified in par. (d) 1., unless the court
2 finds by clear and convincing evidence, including the testimony of one or more
3 qualified expert witnesses, that continued custody of the Indian juvenile by the
4 parent or Indian custodian is likely to result in serious emotional or physical damage
5 to the juvenile under s. 938.028 (4) (d) 1. and the court finds that active efforts under
6 s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's
7 family and that those efforts have proved unsuccessful. These findings are not
8 required if they were made in the dispositional order under which the juvenile is
9 being sanctioned. The findings under this paragraph shall be in addition to the
10 findings under par. (cm), except that for the sole purpose of determining whether the
11 cost of providing care for an Indian juvenile is eligible for reimbursement under 42
12 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm)
13 shall be considered to be the same findings.

14 **SECTION 342.** 938.355 (6m) (am) 1. of the statutes is amended to read:

15 938.355 **(6m)** (am) 1. If a juvenile who has violated a municipal ordinance
16 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by
17 the municipal court, the municipal court may petition the court assigned to exercise
18 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction
19 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at
20 the time of the judgment the municipal court explained the conditions to the juvenile
21 and informed the juvenile of that possible sanction or if before the violation the
22 juvenile has acknowledged in writing that he or she has read, or has had read to him
23 or her, those conditions and that possible sanction and that he or she understands
24 those conditions and that possible sanction. The petition shall contain a statement
25 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25

SENATE BILL 288

1 USC ~~1911~~ 1901 to 1963, and, if the juvenile may be subject to that act, the names and
2 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

3 **SECTION 343.** 938.355 (6m) (bm) of the statutes is created to read:

4 938.355 (**6m**) (bm) *Indian juvenile; notice.* If the person initiating the motion
5 knows or has reason to know that the juvenile is an Indian juvenile who has been
6 found to be in need of protection or services under s. 938.13 (6) or who has been
7 adjudged to have violated an ordinance enacted under s. 118.163 (2), and if the
8 motion is seeking removal of the juvenile from the home of his or her parent or Indian
9 custodian and placement in a place of nonsecure custody specified in par. (a) 1g.,
10 notice under par. (b) to the Indian juvenile's parent shall be provided in the manner
11 specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian
12 juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until
13 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
14 custodian, and tribe or, if the identity or location of the Indian juvenile's parent,
15 Indian custodian, or tribe cannot be determined, until at least 10 days after receipt
16 of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's
17 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
18 additional days to enable the requester to prepare for the hearing.

19 **SECTION 344.** 938.355 (6m) (c) of the statutes is amended to read:

20 938.355 (**6m**) (c) *Sanction hearing.* Before imposing a sanction under par. (a)
21 or (ag), the court shall hold a hearing at which the juvenile is entitled to be
22 represented by legal counsel and to present evidence. The **Except as provided in par.**
23 (bm), the hearing shall be held within 15 days after the filing of a motion under par.
24 (b).

25 **SECTION 345.** 938.355 (6m) (cr) of the statutes is created to read:

SENATE BILL 288

1 938.355 (6m) (cr) *Indian juvenile; findings.* In the case of an Indian juvenile
2 who has been found to be in need of protection or services under s. 938.13 (6) or who
3 has been adjudged to have violated an ordinance enacted under s. 118.163 (2), the
4 court may not order the sanction of removal from the home of the Indian juvenile's
5 parent or Indian custodian and placement in a place of nonsecure custody specified
6 in par. (a) 1g., unless the court finds by clear and convincing evidence, including the
7 testimony of one or more qualified expert witnesses, that continued custody of the
8 Indian juvenile by the parent or Indian custodian is likely to result in serious
9 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court
10 finds that active efforts under s. 938.028 (4) (d) 2. have been made to prevent the
11 breakup of the Indian juvenile's family and that those efforts have proved
12 unsuccessful. These findings are not required if they were made in the dispositional
13 order under which the juvenile is being sanctioned. The findings under this
14 paragraph shall be in addition to the findings under par. (cm), except that for the sole
15 purpose of determining whether the cost of providing care for an Indian juvenile is
16 eligible for reimbursement under 42 USC 670 to 679b, the findings under this
17 paragraph and the findings under par. (cm) shall be considered to be the same
18 findings.

19 **SECTION 346.** 938.357 (1) (am) 1. of the statutes is amended to read:

20 938.357 (1) (am) 1. If the proposed change in placement involves any change
21 in placement other than a change in placement under par. (c), the person or agency
22 primarily responsible for implementing the dispositional order or the district
23 attorney shall cause written notice of the proposed change in placement to be sent
24 to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any
25 foster parent, treatment foster parent, or other physical custodian described in s.

SENATE BILL 288

1 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who has been removed
2 from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m),
3 or (7), written notice shall also be sent to the Indian juvenile's Indian custodian and
4 tribe. The notice shall contain the name and address of the new placement, the
5 reasons for the change in placement, a statement describing why the new placement
6 is preferable to the present placement, and a statement of how the new placement
7 satisfies objectives of the treatment plan ordered by the court.

8 **SECTION 347.** 938.357 (1) (am) 1. of the statutes, as affected by 2009 Wisconsin
9 Acts 28 and (this act), is repealed and recreated to read:

10 938.357 (1) (am) 1. If the proposed change in placement involves any change
11 in placement other than a change in placement under par. (c), the person or agency
12 primarily responsible for implementing the dispositional order or the district
13 attorney shall cause written notice of the proposed change in placement to be sent
14 to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any
15 foster parent or other physical custodian described in s. 48.62 (2) of the juvenile. If
16 the juvenile is an Indian juvenile who has been removed from the home of his or her
17 parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), written notice shall
18 also be sent to the Indian juvenile's Indian custodian and tribe. The notice shall
19 contain the name and address of the new placement, the reasons for the change in
20 placement, a statement describing why the new placement is preferable to the
21 present placement, and a statement of how the new placement satisfies objectives
22 of the treatment plan ordered by the court.

23 **SECTION 348.** 938.357 (1) (am) 1g. of the statutes is created to read:

24 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who has been removed
25 from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m),

SENATE BILL 288

1 or (7), and if the proposed change in placement would change the Indian juvenile's
2 placement from a placement outside that home to another placement outside that
3 home, a notice under subd. 1. shall also contain a statement as to whether the new
4 placement is in compliance with the order of placement preference under s. 938.028
5 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance
6 with that order, specific information showing good cause, as described in s. 938.028
7 (6) (d), for departing from that order.

8 **SECTION 349.** 938.357 (1) (am) 2. of the statutes is amended to read:

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

23 **SECTION 350.** 938.357 (1) (am) 2. of the statutes, as affected by 2009 Wisconsin
24 Acts 28 and (this act), is repealed and recreated to read:

SENATE BILL 288

1 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
2 a specific placement under s. 938.355 (2) (b) 2. may obtain a hearing on the matter
3 by filing an objection with the court within 10 days after receipt of the notice.
4 Placements may not be changed until 10 days after that notice is sent to the court
5 unless the parent, guardian, legal custodian, or Indian custodian, the juvenile, if 12
6 or more years of age, and the juvenile's tribe, if the juvenile is an Indian juvenile who
7 has been removed from the home of his or her parent or Indian custodian under s.
8 938.13 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in
9 placement that were authorized in the dispositional order may be made immediately
10 if notice is given as required under subd. 1. In addition, a hearing is not required for
11 placement changes authorized in the dispositional order except when an objection
12 filed by a person who received notice alleges that new information is available that
13 affects the advisability of the court's dispositional order.

14 **SECTION 351.** 938.357 (1) (am) 3. of the statutes is amended to read:

15 938.357 (1) (am) 3. If the court changes the juvenile's placement from a
16 placement outside the home to another placement outside the home, the change in
17 placement order shall contain the applicable order under sub. (2v) (a) 1m. and the
18 applicable statement under sub. (2v) (a) 2. If the court changes the placement of an
19 Indian juvenile who has been removed from the home of his or her parent or Indian
20 custodian under s. 938.13 (4), (6), (6m), or (7) from a placement outside that home
21 to another placement outside that home, the change in placement order shall, in
22 addition, comply with the order of placement preference under s. 938.028 (6) (a) or,
23 if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s.
24 938.028 (6) (d), for departing from that order.

25 **SECTION 352.** 938.357 (1) (c) 1m. of the statutes is created to read:

SENATE BILL 288

1 938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of
2 protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change
3 in placement would change the placement of the juvenile from a placement in the
4 home of his or her parent or Indian custodian to a placement outside that home, a
5 request under subd. 1. shall also contain specific information showing that continued
6 custody of the Indian juvenile by the parent or Indian custodian is likely to result in
7 serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1.,
8 specific information showing that active efforts under s. 938.028 (4) (d) 2. have been
9 made to prevent the breakup of the Indian juvenile’s family and that those efforts
10 have proved unsuccessful, a statement as to whether the new placement is in
11 compliance with the order of placement preference under s. 938.028 (6) (a) or, if
12 applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that
13 order, specific information showing good cause, as described in s. 938.028 (6) (d), for
14 departing from that order.

15 **SECTION 353.** 938.357 (1) (c) 2. of the statutes is amended to read:

16 938.357 (1) (c) 2. The court shall hold a hearing prior to ordering a change in
17 placement requested under subd. 1. At least 3 days prior to the hearing, the court
18 shall provide notice of the hearing, together with a copy of the request for the change
19 in placement, to the juvenile, the parent, guardian, and legal custodian of the
20 juvenile, ~~and all parties that are bound by the dispositional order.~~ If, and, if the
21 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
22 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe. Subject to subd.
23 2m., if all parties consent, the court may proceed immediately with the hearing.

24 **SECTION 354.** 938.357 (1) (c) 2m. of the statutes is created to read:

SENATE BILL 288

1 938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need
2 of protection or services under s. 938.13 (4), (6), (6m), or (7), if the proposed change
3 in placement would change the placement of the juvenile from a placement in the
4 home of his or her parent or Indian custodian to a placement outside that home notice
5 under subd. 2. to the Indian juvenile's parent, Indian custodian, and tribe shall be
6 provided in the manner specified in s. 938.028 (4) (a). No hearing on the request may
7 be held until at least 10 days after receipt of the notice by the Indian juvenile's
8 parent, Indian custodian, and tribe or, if the identity or location of the Indian
9 juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 10
10 days after receipt of the notice by the U.S. secretary of the interior. On request of the
11 Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a
12 continuance of up to 20 additional days to enable the requester to prepare for the
13 hearing.

14 **SECTION 355.** 938.357 (1) (c) 3. of the statutes is amended to read:

15 938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement
16 in the juvenile's home to a placement outside the juvenile's home, the change in
17 placement order shall contain the findings under sub. (2v) (a) 1., the applicable order
18 under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in
19 addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to
20 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the
21 court changes the placement of an Indian juvenile who is in need of protection or
22 services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or
23 her parent or Indian custodian to a placement outside that home, the change in
24 placement order shall contain the findings under sub. (2v) (a) 4. and comply with the
25 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)

SENATE BILL 288

1 (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing
2 from that order.

3 **SECTION 356.** 938.357 (2m) (a) of the statutes is amended to read:

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

22 **SECTION 357.** 938.357 (2m) (am) of the statutes is created to read:

23 938.357 **(2m)** (am) *Indian juvenile; information required.* 1. If the proposed
24 change of placement would change the placement of an Indian juvenile placed in the
25 home of his or her parent or Indian custodian under s. 938.357 (4), (6), (6m), or (7)

SENATE BILL 288

1 to a placement outside that home, a request under par. (a) shall also contain specific
2 information showing that continued custody of the Indian juvenile by the parent or
3 Indian custodian is likely to result in serious emotional or physical damage to the
4 juvenile under s. 938.028 (4) (d) 1., specific information showing that active efforts
5 under s. 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian
6 juvenile's family and that those efforts have proved unsuccessful, a statement as to
7 whether the new placement is in compliance with the order of placement preference
8 under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement
9 is not in compliance with that order, specific information showing good cause, as
10 described in s. 938.028 (6) (d), for departing from that order.

11 2. If the proposed change in placement would change the placement of an
12 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
13 or (7) from a placement outside the home of his or her parent or Indian custodian to
14 another placement outside that home, a request under par. (a) shall also contain a
15 statement as to whether the new placement is in compliance with the order of
16 placement preference under s. 938.028 (6) (a) or if applicable, s. 938.028 (6) (b) and,
17 if the new placement is not in compliance with that order, specific information
18 showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

19 **SECTION 358.** 938.357 (2m) (b) of the statutes is amended to read:

20 938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior
21 to ordering any change in placement requested or proposed under par. (a) if the
22 request states that new information is available that affects the advisability of the
23 current placement. A hearing is not required if the requested or proposed change in
24 placement does not involve a change in placement of a juvenile placed in the
25 juvenile's home to a placement outside the juvenile's home, written waivers of

SENATE BILL 288

1 objection to the proposed change in placement are signed by all parties entitled to
2 receive notice under ~~sub. (1) (am) 1. this paragraph~~, and the court approves. If a
3 hearing is scheduled, not less than 3 days before the hearing the court shall notify
4 the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster
5 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2)
6 of the juvenile, ~~and all parties who are bound by the dispositional order at least 3~~
7 ~~days prior to the hearing, and, if the juvenile is an Indian juvenile who is in need of~~
8 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
9 custodian and tribe. A copy of the request or proposal for the change in placement
10 shall be attached to the notice. ~~If Subject to par. (bm), if all of the parties consent,~~
11 the court may proceed immediately with the hearing.

12 **SECTION 359.** 938.357 (2m) (b) of the statutes, as affected by 2009 Wisconsin
13 Acts 28 and (this act), is repealed and recreated to read:

14 938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior
15 to ordering any change in placement requested or proposed under par. (a) if the
16 request states that new information is available that affects the advisability of the
17 current placement. A hearing is not required if the requested or proposed change in
18 placement does not involve a change in placement of a juvenile placed in the
19 juvenile's home to a placement outside the juvenile's home, written waivers of
20 objection to the proposed change in placement are signed by all parties entitled to
21 receive notice under this paragraph, and the court approves. If a hearing is
22 scheduled, not less than 3 days before the hearing the court shall notify the juvenile,
23 the parent, guardian, and legal custodian of the juvenile, any foster parent or other
24 physical custodian described in s. 48.62 (2) of the juvenile, all parties who are bound
25 by the dispositional order, and, if the juvenile is an Indian juvenile who is in need of

SENATE BILL 288

1 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
2 custodian and tribe. A copy of the request or proposal for the change in placement
3 shall be attached to the notice. Subject to par. (bm), if all of the parties consent, the
4 court may proceed immediately with the hearing.

5 **SECTION 360.** 938.357 (2m) (bm) of the statutes is created to read:

6 938.357 (2m) (bm) *Indian juvenile; notice.* If the juvenile is an Indian juvenile
7 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the
8 proposed change in placement would change the placement of the Indian juvenile
9 from a placement in the home of his or her parent or Indian custodian to a placement
10 outside that home, notice under par. (b) to the Indian juvenile's parent, Indian
11 custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a).
12 No hearing on the request or proposal may be held until at least 10 days after receipt
13 of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the
14 identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot
15 be determined, until at least 10 days after receipt of the notice by the U.S. secretary
16 of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe,
17 the court shall grant a continuance of up to 20 additional days to enable the requester
18 to prepare for the hearing.

19 **SECTION 361.** 938.357 (2m) (c) of the statutes is renumbered 938.357 (2m) (c)

20 1. and amended to read:

21 938.357 (2m) (c) *Findings required.* 1. If the court changes the juvenile's
22 placement from a placement in the juvenile's home to a placement outside the
23 juvenile's home, the change in placement order shall contain the findings under sub.
24 (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement
25 under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances

SENATE BILL 288

1 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination
2 under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who
3 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a
4 placement in the home of his or her parent or Indian custodian to a placement outside
5 that home, the change in placement order shall, in addition, contain the findings
6 under sub. (2v) (a) 4. and comply with the order of placement preference under s.
7 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause,
8 as described in s. 938.028 (6) (d), for departing from that order.

9 2. If the court changes the juvenile’s placement from a placement outside the
10 home to another placement outside the home, the change in placement order shall
11 contain the applicable order under sub. (2v) (a) 1m. and the applicable statement
12 under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who
13 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a
14 placement outside the home of his or her parent or Indian custodian to another
15 placement outside that home, the change in placement order shall, in addition,
16 comply with the order of placement preference under s. 938.028 (6) (a) or, if
17 applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s.
18 938.028 (6) (d), for departing from the order.

19 **SECTION 362.** 938.357 (2v) (a) 4. of the statutes is created to read:

20 938.357 (2v) (a) 4. If the change in placement order changes the placement of
21 an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
22 (6m), or (7) from a placement in the home of his or her parent or Indian custodian to
23 a placement outside that home, a finding supported by clear and convincing
24 evidence, including the testimony of one or more qualified expert witnesses, that
25 continued custody of the Indian juvenile by the parent or Indian custodian is likely

SENATE BILL 288

1 to result in serious emotional or physical damage to the juvenile under s. 938.028 (4)
2 (d) 1. and a finding that active efforts under s. 938.028 (4) (d) 2. have been made to
3 prevent the breakup of the Indian juvenile's family and that those efforts have
4 proved unsuccessful. The findings under this subdivision shall be in addition to the
5 findings under subd. 1., except that for the sole purpose of determining whether the
6 cost of providing care for an Indian juvenile is eligible for reimbursement under 42
7 USC 670 to 679b, the findings under this subdivision and the findings under subd.
8 1. shall be considered to be the same findings. The findings under this subdivision
9 are not required if they were made in a previous order in the proceeding unless a
10 change in circumstances warrants new findings.

11 **SECTION 363.** 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c)
12 and amended to read:

13 938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances
14 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold
15 a hearing under s. 938.38 (4m) within 30 days after the date of that finding to
16 determine the permanency plan for the juvenile. ~~If a hearing is held under this~~
17 ~~paragraph, the agency responsible for preparing the permanency plan shall file the~~
18 ~~permanency plan with the court at least 5 days before the date of the hearing.~~

19 **SECTION 364.** 938.357 (2v) (c) 2. of the statutes, as affected by 2009 Wisconsin
20 Act 28, is repealed.

21 **SECTION 365.** 938.357 (2v) (c) 3. of the statutes, as affected by 2009 Wisconsin
22 Act 28, is repealed.

23 **SECTION 366.** 938.363 (1) (a) of the statutes is amended to read:

24 938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian,
25 any person or agency bound by a dispositional order, ~~or~~ the district attorney or

SENATE BILL 288

1 corporation counsel in the county in which the dispositional order was entered or, if
2 the juvenile is an Indian juvenile who is in need of protection or services under s.
3 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian may request a
4 revision in the order that does not involve a change in placement, including a revision
5 with respect to the amount of child support to be paid by a parent. The court may
6 also propose a revision. The request or court proposal shall set forth in detail the
7 nature of the proposed revision and what new information is available that affects
8 the advisability of the court’s disposition. The request or court proposal shall be
9 submitted to the court. The court shall hold a hearing on the matter prior to any
10 revision of the dispositional order if the request or court proposal indicates that new
11 information is available that affects the advisability of the court’s dispositional order,
12 unless written waivers of objections to the revision are signed by all parties entitled
13 to receive notice and the court approves.

14 **SECTION 367.** 938.363 (1) (b) of the statutes is amended to read:

15 938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
16 shall notify the juvenile, the juvenile’s parent, guardian, and legal custodian, all
17 parties bound by the dispositional order, the juvenile’s foster parent, treatment
18 foster parent, or other physical custodian described in s. 48.62 (2), and the district
19 attorney or corporation counsel in the county in which the dispositional order was
20 entered at least 3 days prior to the hearing. If the juvenile is an Indian juvenile who
21 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall
22 also notify the Indian juvenile’s Indian custodian and, if that juvenile is placed
23 outside the home of his or her parent or Indian custodian, the Indian juvenile’s tribe.
24 A copy of the request or proposal shall be attached to the notice. If all parties consent,
25 the court may proceed immediately with the hearing. No revision may extend the

SENATE BILL 288

1 effective period of the original order, or revise an original order under s. 938.34 (3)
2 (f) or (6) (am) to impose more than a total of 30 days of detention, nonsecure custody,
3 or inpatient treatment on a juvenile.

4 **SECTION 368.** 938.363 (1) (b) of the statutes, as affected by 2009 Wisconsin Acts
5 28 and (this act), is repealed and recreated to read:

6 938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court
7 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all
8 parties bound by the dispositional order, the juvenile's foster parent or other physical
9 custodian described in s. 48.62 (2), and the district attorney or corporation counsel
10 in the county in which the dispositional order was entered. If the juvenile is an
11 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
12 or (7), the court shall also notify the Indian juvenile's Indian custodian and, if that
13 juvenile is placed outside the home of his or her parent or Indian custodian, the
14 Indian juvenile's tribe. A copy of the request or proposal shall be attached to the
15 notice. If all parties consent, the court may proceed immediately with the hearing.
16 No revision may extend the effective period of the original order, or revise an original
17 order under s. 938.34 (3) (f) or (6) (am) to impose more than a total of 30 days of
18 detention, nonsecure custody, or inpatient treatment on a juvenile.

19 **SECTION 369.** 938.365 (1m) of the statutes is amended to read:

20 938.365 (1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal
21 custodian, any person or agency bound by the dispositional order, the district
22 attorney or corporation counsel in the county in which the dispositional order was
23 entered, ~~or~~ the court on its own motion, or, if the juvenile is an Indian juvenile who
24 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian
25 juvenile's Indian custodian may request an extension of an order under s. 938.355.

SENATE BILL 288

1 The request shall be submitted to the court ~~which~~ that entered the order. An order
2 under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or
3 inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other
4 orders or portions of orders under s. 938.355 may be extended only as provided in this
5 section.

6 **SECTION 370.** 938.365 (2) of the statutes is amended to read:

7 938.365 (2) NOTICE. No order may be extended without a hearing. The court
8 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the
9 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal
10 custodian, all of the parties present at the original hearing, the juvenile's foster
11 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2),
12 and the district attorney or corporation counsel in the county in which the
13 dispositional order was entered ~~of the time and place of the hearing.~~ If the juvenile
14 is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
15 (6m), or (7), the court shall also notify the Indian juvenile's Indian custodian and, if
16 that juvenile is placed outside the home of his or her parent or Indian custodian, the
17 Indian juvenile's tribe.

18 **SECTION 371.** 938.365 (2) of the statutes, as affected by 2009 Wisconsin Acts
19 28 and (this act), is repealed and recreated to read:

20 938.365 (2) NOTICE. No order may be extended without a hearing. The court
21 shall provide notice of the time and place of the hearing to the juvenile or the
22 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal
23 custodian, all of the parties present at the original hearing, the juvenile's foster
24 parent or other physical custodian described in s. 48.62 (2), and the district attorney
25 or corporation counsel in the county in which the dispositional order was entered.

SENATE BILL 288

1 If the juvenile is an Indian juvenile who is in need of protection or services under s.
2 938.13 (4), (6), (6m), or (7), the court shall also notify the Indian juvenile's Indian
3 custodian and, if that juvenile is placed outside the home of his or her parent or
4 Indian custodian, the Indian juvenile's tribe.

5 **SECTION 372.** 938.365 (2g) (b) 4. of the statutes is created to read:

6 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside
7 the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7),
8 specific information showing that active efforts under s. 938.028 (4) (d) 2. have been
9 made to prevent the breakup of the Indian juvenile's family and that those efforts
10 have proved unsuccessful.

11 **SECTION 373.** 938.365 (2m) (a) 1. of the statutes is amended to read:

12 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of
13 extension. If the juvenile is placed outside of his or her home, the person or agency
14 primarily responsible for providing services to the juvenile shall present as evidence
15 specific information showing that the person or agency has made reasonable efforts
16 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile
17 to the home is the goal of the permanency plan and any of the circumstances under
18 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home
19 of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the person
20 or agency primarily responsible for providing services to the Indian juvenile shall
21 also present as evidence specific information showing that active efforts under s.
22 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian juvenile's
23 family and that those efforts have proved unsuccessful.

24 1m. The court shall make findings of fact and conclusions of law based on the
25 evidence. The findings of fact shall include a finding as to whether reasonable efforts

SENATE BILL 288

1 were made by the agency primarily responsible for providing services to the juvenile
2 to achieve the goal of the juvenile’s permanency plan, unless return of the juvenile
3 to the home is the goal of the permanency plan and the court finds that any of the
4 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian
5 juvenile who is placed outside the home of his or her parent or Indian custodian
6 under s. 938.13 (4), (6), (6m), or (7), the findings of fact shall also include a finding
7 that active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup of the
8 Indian juvenile’s family and that those efforts have proved unsuccessful. An order
9 shall be issued under s. 938.355.

10 **SECTION 374.** 938.365 (2m) (a) 3. of the statutes is amended to read:

11 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.
12 relating to reasonable efforts to achieve the goal of the juvenile’s permanency plan
13 and the findings under subd. 2. on a case-by-case basis based on circumstances
14 specific to the juvenile and shall document or reference the specific information on
15 which those findings are based in the order issued under s. 938.355. An order that
16 merely references subd. 1. 1m. or 2. without documenting or referencing that specific
17 information in the order or an amended order that retroactively corrects an earlier
18 order that does not comply with this subdivision is not sufficient to comply with this
19 subdivision.

20 **SECTION 375.** 938.365 (2m) (ad) 1. of the statutes is renumbered 938.365 (2m)
21 (ad) and amended to read:

22 938.365 (2m) (ad) If the court finds that any of the circumstances under s.
23 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
24 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
25 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~

SENATE BILL 288

1 ~~agency responsible for preparing the permanency plan shall file the permanency~~
2 ~~plan with the court not less than 5 days before the date of the hearing.~~

3 **SECTION 376.** 938.365 (2m) (ad) 2. of the statutes, as affected by 2009 Wisconsin
4 Act 28, is repealed.

5 **SECTION 377.** 938.365 (2m) (ag) of the statutes is amended to read:

6 938.365 **(2m)** (ag) The court shall give a foster parent, treatment foster parent,
7 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under
8 ~~par. (ad) 2. or~~ sub. (2) an opportunity to be heard at the hearing by permitting the
9 foster parent, treatment foster parent, or other physical custodian to make a written
10 or oral statement during the hearing, or to submit a written statement prior to the
11 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,
12 or other physical custodian who receives notice of a hearing under ~~par. (ad) 2. or~~ sub.
13 (2) and an opportunity to be heard under this paragraph does not become a party to
14 the proceeding on which the hearing is held solely on the basis of receiving that notice
15 and having the opportunity to be heard.

16 **SECTION 378.** 938.365 (2m) (ag) of the statutes, as affected by 2009 Wisconsin
17 Acts 28 and (this act), is repealed and recreated to read:

18 938.365 **(2m)** (ag) The court shall give a foster parent or other physical
19 custodian described in s. 48.62 (2) who is notified of a hearing under sub. (2) an
20 opportunity to be heard at the hearing by permitting the foster parent or other
21 physical custodian to make a written or oral statement during the hearing, or to
22 submit a written statement prior to the hearing, relevant to the issue of extension.
23 A foster parent or other physical custodian who receives notice of a hearing under
24 sub. (2) and an opportunity to be heard under this paragraph does not become a party

SENATE BILL 288

1 to the proceeding on which the hearing is held solely on the basis of receiving that
2 notice and having the opportunity to be heard.

3 **SECTION 379.** 938.38 (3) (intro.) of the statutes is amended to read:

4 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) 1., the agency shall file
5 the permanency plan with the court within 60 days after the date on which the
6 juvenile was first removed from his or her home, except under either of the following
7 conditions:

8 **SECTION 380.** 938.38 (4) (i) of the statutes is created to read:

9 938.38 (4) (i) If the juvenile is an Indian juvenile who is placed outside the home
10 of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), all of the
11 following:

12 1. The name, address, and telephone number of the Indian juvenile's Indian
13 custodian and tribe.

14 2. A description of the remedial services and rehabilitation programs offered
15 under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian juvenile's
16 family.

17 3. A statement as to whether the Indian juvenile's placement is in compliance
18 with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s.
19 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement
20 as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from
21 that order.

22 **SECTION 381.** 938.38 (4m) of the statutes is created to read:

23 938.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding
24 under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the
25 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent,

SENATE BILL 288

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

5 (b) At least 10 days before the hearing the court shall notify the juvenile, any
6 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
7 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile and,
8 if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or
9 services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian
10 and tribe of the time, place, and purpose of the hearing.

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

19 **SECTION 382.** 938.38 (4m) (b) and (c) of the statutes, as created by 2009
20 Wisconsin Act (this act), are amended to read:

21 938.38 (4m) (b) At least 10 days before the hearing the court shall notify the
22 juvenile, any parent, guardian, and legal custodian of the juvenile, any foster parent,
23 ~~treatment foster parent,~~ or other physical custodian described in s. 48.62 (2) of the
24 juvenile and, if the juvenile is an Indian juvenile who is or is alleged to be in need

SENATE BILL 288

1 of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's
2 Indian custodian and tribe of the time, place, and purpose of the hearing.

3 (c) The court shall give a foster parent, ~~treatment foster parent~~, or other
4 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)
5 a right to be heard at the hearing by permitting the foster parent, ~~treatment foster~~
6 ~~parent~~, or other physical custodian to make a written or oral statement during the
7 hearing, or to submit a written statement prior to the hearing, relevant to the issues
8 to be determined at the hearing. The foster parent, ~~treatment foster parent~~, or other
9 physical custodian does not become a party to the proceeding on which the hearing
10 is held solely on the basis of receiving that notice and right to be heard.

11 **SECTION 383.** 938.38 (5) (b) of the statutes is amended to read:

12 938.38 (5) (b) The court or the agency shall notify ~~the parents of the juvenile,~~
13 ~~the juvenile, if he or she is 10 years of age or older, and; the juvenile's parent,~~
14 guardian, and legal custodian; the juvenile's foster parent, the juvenile's treatment
15 foster parent, the operator of the facility in which the juvenile is living, or the relative
16 with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is
17 placed outside the home of his or her parent or Indian custodian under s. 938.13 (4),
18 (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time, and
19 place of the review, of the issues to be determined as part of the review, and of the
20 fact that they may have an opportunity to be heard at the review by submitting
21 written comments not less than 10 working days before the review or by
22 participating at the review. The court or agency shall notify the person representing
23 the interests of the public, the juvenile's counsel, and the juvenile's guardian ad litem
24 of the date of the review, of the issues to be determined as part of the review, and of
25 the fact that they may submit written comments not less than 10 working days before

SENATE BILL 288

1 the review. The notices under this paragraph shall be provided in writing not less
2 than 30 days before the review and copies of the notices shall be filed in the juvenile's
3 case record.

4 **SECTION 384.** 938.38 (5) (b) of the statutes, as affected by 2009 Wisconsin Acts
5 28 and (this act), is repealed and recreated to read:

6 938.38 (5) (b) The court or the agency shall notify the juvenile, if he or she is
7 10 years of age or older; the juvenile's parent, guardian, and legal custodian; the
8 juvenile's foster parent, the operator of the facility in which the juvenile is living, or
9 the relative with whom the juvenile is living; and, if the juvenile is an Indian juvenile
10 who is placed outside the home of his or her parent or Indian custodian under s.
11 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the
12 date, time, and place of the review, of the issues to be determined as part of the review,
13 and of the fact that they may have an opportunity to be heard at the review by
14 submitting written comments not less than 10 working days before the review or by
15 participating at the review. The court or agency shall notify the person representing
16 the interests of the public, the juvenile's counsel, and the juvenile's guardian ad litem
17 of the date of the review, of the issues to be determined as part of the review, and of
18 the fact that they may submit written comments not less than 10 working days before
19 the review. The notices under this paragraph shall be provided in writing not less
20 than 30 days before the review and copies of the notices shall be filed in the juvenile's
21 case record.

22 **SECTION 385.** 938.38 (5) (c) 8. of the statutes is created to read:

23 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is placed outside the
24 home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7),
25 whether active efforts under s. 938.028 (4) (d) 2. were made to prevent the breakup

SENATE BILL 288

1 of the Indian juvenile’s family, whether those efforts have proved unsuccessful,
2 whether the Indian child’s placement is in compliance with the order of placement
3 preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the
4 placement is not in compliance with that order, whether there is good cause, as
5 described in s. 938.028 (6) (d), for departing from that order.

6 **SECTION 386.** 938.38 (5) (d) of the statutes is amended to read:

7 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the
8 permanency plan shall, at least 5 days before a review by a review panel, provide to
9 each person appointed to the review panel, the juvenile’s parent, guardian, and legal
10 custodian, the person representing the interests of the public, the juvenile’s counsel
11 and, the juvenile’s guardian ad litem, and, if the juvenile is an Indian juvenile who
12 is placed outside the home of his or her parent or Indian custodian under s. 938.13
13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe a copy of the
14 permanency plan and any written comments submitted under par. (b).
15 Notwithstanding s. 938.78 (2) (a), a person appointed to a review panel, the person
16 representing the interests of the public, the juvenile’s counsel and, the juvenile’s
17 guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the
18 home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the
19 Indian juvenile’s Indian custodian and tribe may have access to any other records
20 concerning the juvenile for the purpose of participating in the review. A person
21 permitted access to a juvenile’s records under this paragraph may not disclose any
22 information from the records to any other person.

23 **SECTION 387.** 938.38 (5) (e) of the statutes is amended to read:

24 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
25 the determinations under par. (c) and shall provide a copy to the court that entered

SENATE BILL 288

1 the order; the juvenile or the juvenile's counsel or guardian ad litem; the person
2 representing the interests of the public; the juvenile's parent or guardian and, or
3 legal custodian; the juvenile's foster parent, the juvenile's treatment foster parent,
4 or the operator of the facility where the juvenile is living; and, if the juvenile is an
5 Indian juvenile who is placed outside the home of his or her parent or Indian
6 custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian
7 and tribe.

8 **SECTION 388.** 938.38 (5) (e) of the statutes, as affected by 2009 Wisconsin Acts
9 28 and (this act), is repealed and recreated to read:

10 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of
11 the determinations under par. (c) and shall provide a copy to the court that entered
12 the order; the juvenile or the juvenile's counsel or guardian ad litem; the person
13 representing the interests of the public; the juvenile's parent, guardian, or legal
14 custodian; the juvenile's foster parent or the operator of the facility where the
15 juvenile is living; and, if the juvenile is an Indian juvenile who is placed outside the
16 home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the
17 Indian juvenile's Indian custodian and tribe.

18 **SECTION 389.** 938.38 (5m) (b) of the statutes is amended to read:

19 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court
20 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the
21 juvenile's foster parent or treatment foster parent, the operator of the facility in
22 which the juvenile is living, or the relative with whom the juvenile is living; the
23 juvenile's counsel, and the juvenile's guardian ad litem; the agency that prepared the
24 permanency plan; and the person representing the interests of the public; and, if the
25 juvenile is an Indian juvenile who is placed outside the home of his or her parent or

SENATE BILL 288

1 Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian
2 custodian and tribe of the date, time, and place of the hearing.

3 **SECTION 390.** 938.38 (5m) (b) of the statutes, as affected by 2009 Wisconsin Acts
4 28 and (this act), is repealed and recreated to read:

5 938.38 **(5m)** (b) Not less than 30 days before the date of the hearing, the court
6 shall notify the juvenile; the juvenile’s parent, guardian, and legal custodian; the
7 juvenile’s foster parent, the operator of the facility in which the juvenile is living, or
8 the relative with whom the juvenile is living; the juvenile’s counsel and the juvenile’s
9 guardian ad litem; the agency that prepared the permanency plan; the person
10 representing the interests of the public; and, if the juvenile is an Indian juvenile who
11 is placed outside the home of his or her parent or Indian custodian under s. 938.13
12 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe of the date, time,
13 and place of the hearing.

14 **SECTION 391.** 938.38 (5m) (d) of the statutes is amended to read:

15 938.38 **(5m)** (d) At least 5 days before the date of the hearing the agency that
16 prepared the permanency plan shall provide a copy of the permanency plan and any
17 written comments submitted under par. (c) to the court, to the juvenile’s parent,
18 guardian, and legal custodian, to the person representing the interests of the public,
19 ~~and to the juvenile’s counsel or guardian ad litem, and, if the juvenile is an Indian~~
20 ~~juvenile who is placed outside the home of his or her parent or Indian custodian~~
21 ~~under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile’s Indian custodian and~~
22 ~~tribe.~~ Notwithstanding s. 938.78 (2) (a), the person representing the interests of the
23 public ~~and,~~ the juvenile’s counsel or guardian ad litem, ~~and, if the juvenile is an~~
24 ~~Indian juvenile who is placed outside the home of his or her parent or Indian~~
25 ~~custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian~~

SENATE BILL 288

1 and tribe may have access to any other records concerning the juvenile for the
2 purpose of participating in the review. A person permitted access to a juvenile's
3 records under this paragraph may not disclose any information from the records to
4 any other person.

5 **SECTION 392.** 938.38 (5m) (e) of the statutes is amended to read:

6 938.38 **(5m)** (e) After the hearing, the court shall make written findings of fact
7 and conclusions of law relating to the determinations under sub. (5) (c) and shall
8 provide a copy of those findings of fact and conclusions of law to the juvenile; the
9 juvenile's parent, guardian, and legal custodian; the juvenile's foster parent or
10 treatment foster parent, the operator of the facility in which the juvenile is living,
11 or the relative with whom the juvenile is living; the agency that prepared the
12 permanency plan; and the person representing the interests of the public; and, if the
13 juvenile is an Indian juvenile who is placed outside the home of his or her parent or
14 Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
15 custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on
16 a case-by-case basis based on circumstances specific to the juvenile and shall
17 document or reference the specific information on which those findings are based in
18 the findings of fact and conclusions of law prepared under this paragraph. Findings
19 of fact and conclusions of law that merely reference sub. (5) (c) 7. without
20 documenting or referencing that specific information in the findings of fact and
21 conclusions of law or amended findings of fact and conclusions of law that
22 retroactively correct earlier findings of fact and conclusions of law that do not comply
23 with this paragraph are not sufficient to comply with this paragraph.

24 **SECTION 393.** 938.38 (5m) (e) of the statutes, as affected by 2009 Wisconsin Acts
25 28 and (this act), is repealed and recreated to read:

SENATE BILL 288

1 938.38 (5m) (e) After the hearing, the court shall make written findings of fact
2 and conclusions of law relating to the determinations under sub. (5) (c) and shall
3 provide a copy of those findings of fact and conclusions of law to the juvenile; the
4 juvenile’s parent, guardian, and legal custodian; the juvenile’s foster parent, the
5 operator of the facility in which the juvenile is living, or the relative with whom the
6 juvenile is living; the agency that prepared the permanency plan; the person
7 representing the interests of the public; and, if the juvenile is an Indian juvenile who
8 is placed outside the home of his or her parent or Indian custodian under s. 938.13
9 (4), (6), (6m), or (7), the Indian juvenile’s Indian custodian and tribe. The court shall
10 make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on
11 circumstances specific to the juvenile and shall document or reference the specific
12 information on which those findings are based in the findings of fact and conclusions
13 of law prepared under this paragraph. Findings of fact and conclusions of law that
14 merely reference sub. (5) (c) 7. without documenting or referencing that specific
15 information in the findings of fact and conclusions of law or amended findings of fact
16 and conclusions of law that retroactively correct earlier findings of fact and
17 conclusions of law that do not comply with this paragraph are not sufficient to comply
18 with this paragraph.

19 **SECTION 394.** 938.538 (6m) (a) 1. of the statutes is repealed.

20 **SECTION 395.** 938.538 (6m) (a) 4. of the statutes is amended to read:

21 938.538 (6m) (a) 4. “Minority group member” means a Black, a Hispanic, or an
22 American Indian person.

23 **SECTION 396. Effective dates.** This act takes effect on the day after
24 publication, except as follows:

