



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-1609/1  
GMM:jld&klm

## 2015 ASSEMBLY BILL 406

October 13, 2015 – Introduced by Representatives LOUDENBECK, KLEEFISCH, KULP, SKOWRONSKI, SINICKI, A. OTT, KITCHENS and MURPHY, cosponsored by Senators PETROWSKI, OLSEN and MOULTON. Referred to Committee on Children and Families.

1     **AN ACT to repeal** 48.427 (4), 48.428, 48.627 (1), 115.76 (12) (a) 8. and 895.485 (1)  
2           (a); **to renumber and amend** 48.385 and 938.385; **to amend** 20.437 (1) (cf)  
3           (title), 48.14 (2) (b), 48.366 (2) (b) 4., 48.38 (4) (f) 3., 48.38 (4) (fg) 5., 48.38 (4)  
4           (fm), 48.38 (4) (h) (intro.), 48.38 (4) (h) 2., 48.38 (4) (h) 4., 48.38 (4) (h) 5., 48.38  
5           (5) (c) 1., 48.38 (5) (c) 6. d., 48.38 (5) (c) 9., 48.427 (1), 48.427 (5), 48.43 (4), 48.481  
6           (2), 48.627 (title), 48.627 (2) (a), 48.627 (2c), 48.627 (2m), 48.627 (2s) (a), 48.627  
7           (2s) (b), 48.627 (3) (b), 48.627 (3) (d), 48.627 (3) (e), 48.627 (3) (f), 48.627 (3) (h),  
8           48.627 (4), 48.647 (3) (d), 48.647 (4), 48.977 (7) (e), 49.34 (4) (a), 49.34 (4) (c),  
9           167.10 (7), 809.107 (2) (bm) (intro.), 895.485 (title), 895.485 (2), 895.485 (3),  
10          895.485 (4) (intro.), 895.485 (4) (a), 938.366 (2) (b) 4., 938.38 (4) (f) 3., 938.38 (4)  
11          (fg) 5., 938.38 (4) (fm), 938.38 (4) (h) (intro.), 938.38 (4) (h) 2., 938.38 (4) (h) 4.,  
12          938.38 (4) (h) 5., 938.38 (5) (c) 1., 938.38 (5) (c) 6. d. and 938.38 (5) (c) 9.; and **to**  
13          **create** 48.02 (1dm), 48.02 (12r), 48.02 (14r), 48.38 (2m), 48.38 (4) (h) 6., 48.38  
14          (4) (h) 7., 48.38 (5) (bm) 3., 48.38 (5) (c) 7m., 48.38 (5m) (c) 3., 48.383, 48.385 (2),

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1 48.43 (5) (b) 2m., 48.627 (2s) (am), 48.67 (4) (a) 1m., 48.67 (5), 895.485 (1) (title),  
2 895.485 (1) (ag), 895.485 (1) (c), 895.485 (1) (d), 895.485 (5) and (6), 938.02 (1g),  
3 938.02 (12r), 938.02 (14r), 938.38 (2m), 938.38 (4) (h) 6., 938.38 (4) (h) 7., 938.38  
4 (5) (bm) 3., 938.38 (5) (c) 7m., 938.38 (5m) (c) 3., 938.383 and 938.385 (2) of the  
5 statutes; **relating to:** use of the reasonable and prudent parent standard for  
6 making decisions concerning the participation of a child placed in out-of-home  
7 care in age or developmentally appropriate activities, permanency planning for  
8 a child 14 years of age or over, providing an exemption from emergency rule  
9 procedures, and granting rule-making authority.

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

Recently, Congress enacted the Preventing Sex Trafficking and Strengthening Families Act, which makes certain changes to Title IV-E of the Social Security Act regarding: 1) use of the reasonable and prudent parent standard for making decisions concerning the participation of a child placed in out-of-home care in age or developmentally appropriate activities; and 2) permanency planning for children 14 years of age or over placed in out-of-home care. A permanency plan is a plan designed to ensure that a child who is placed outside the home is reunified with his or her family whenever appropriate or that the child quickly attains a placement or home providing long-term stability. This bill incorporates those changes into the Children’s Code and the Juvenile Justice Code.

***Reasonable and prudent parent standard***

The bill incorporates the reasonable and prudent parent standard into the Children’s Code and the Juvenile Justice Code by doing all of the following:

1. Requiring a foster parent, guardian, relative other than a parent, or nonrelative in whose home a child is placed; the operator of a group home, residential care center for children and youth, or shelter care facility in which a child is placed; and, in the case of a child placed in a group home, residential care center for children and youth, or shelter care facility, a staff member employed on the site of that home, center, or facility who has been designated by the operator of that home, center, or facility as an out-of-home care provider for purposes of making decisions concerning the child’s participation in age or developmentally appropriate activities (out-of-home care provider) to use the reasonable and prudent parent standard in making decisions concerning a child’s participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities. The bill defines “reasonable and prudent parent standard” as a standard for an out-of-home

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care provider to use in making decisions concerning a child's participation in those activities that is characterized by careful and sensible parental decisions that maintain the health, safety, best interests, and cultural, religious, and tribal values of the child while at the same time encouraging the emotional and developmental growth of the child.

2. Requiring the agency that places, or that arranges the placement of, a child with an out-of-home care provider or the agency assigned primary responsibility for providing services to the child, at the time of placement, to: a) provide to the out-of-home care provider information that is specific to the child for the out-of-home care provider to consider in making reasonable and prudent parenting decisions concerning the child's participation in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities; and b) explain to the out-of-home care provider the parameters of those considerations. The bill requires that information to be prepared in consultation with the child and, if reasonably possible to do so, the child's parent and requires that consultation to also occur and those parameters to also be explained at the time the permanency plan is prepared and each time the permanency plan is revised.

3. Requiring the Department of Children and Families (DCF) to promulgate rules: a) requiring all foster parents to receive training in the use of the reasonable and prudent parent standard in making decisions concerning a child's participation in age or developmentally appropriate activities; b) requiring all residential care centers for children and youth, group homes, and shelter care facilities to employ on the site of that center, home, or facility at all times a staff member designated as an out-of-home care provider for purposes of making those decisions (designated out-of-home care provider) and requiring those designated out-of-home care providers to receive that training; and c) requiring foster parents and designated out-of-home care providers who have received that training to make those decisions in accordance with the reasonable and prudent parent standard.

4. Providing that an out-of-home care provider who grants permission for a child to participate in an age or developmentally appropriate activity is immune from civil liability for any act or omission in granting that permission if in granting that permission the out-of-home care provider applied the reasonable and prudent parent standard in accordance with the requirements of the bill and any rules promulgated by DCF under the bill.

5. Requiring the permanency plan for a child whose permanency goal is not to be returned to his or her home or to be placed for adoption, with a guardian, or with a fit and willing relative, but rather to be placed in some other planned permanent living arrangement, to include a plan to ensure that the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities determined in accordance with the reasonable and prudent parent standard.

6. Requiring the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) or a permanency plan review panel (panel), in reviewing the permanency plan of a child placed in a planned permanent living arrangement, to determine the steps taken by the agency to ascertain whether the child has regular, ongoing opportunities to engage in age or

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developmentally appropriate activities and to ensure that the child's caregiver is applying the reasonable and prudent parent standard to decisions concerning the child's participation in those activities.

***Permanency planning***

This bill incorporates the changes that the federal Preventing Sex Trafficking and Strengthening Families Act made with respect to permanency planning into the Children's Code and the Juvenile Justice Code by doing all of the following:

1. Permitting the permanency goal of placement of a child in a planned permanent living arrangement, other than the child's own home or the home of an adoptive parent, guardian, or fit and willing relative, only in the case of a child 16 years of age or over. Current law does not specify an age limit for that permanency goal.

2. Requiring the agency that prepared the permanency plan for a child placed in a planned permanent living arrangement to present to the juvenile court or panel, on review of the permanency plan, information showing that intensive and ongoing efforts were made by the agency, including searching social media, to return the child to the child's home or to place the child for adoption, with a guardian, or with a fit and willing relative and that those efforts have proved unsuccessful.

3. Requiring the juvenile court or panel, in determining the continuing necessity for and the safety and appropriateness of a placement in a planned permanent living arrangement, to include in that determination an explanation of why the planned permanent living arrangement is the best permanency goal for the child and why it continues not to be in the best interests of the child to be returned to his or her home or to be placed for adoption, with a guardian, or with a fit and willing relative.

4. Requiring the agency primarily responsible for providing services for a child who has been placed in out-of-home care for six months or more to ensure that the child is in possession of a certified copy of the child's birth certificate, a social security card, information on maintaining health care coverage, a copy of the child's health care records, and either a driver's license or a state-issued identification card (identification documents and other important information) during the 90 days before the child attains 18 years of age or the child's juvenile court order terminates, whichever is later.

5. Requiring the agency responsible for preparing the permanency plan for a child 14 years of age or over to prepare the plan in consultation with the child, requiring the permanency plan for such a child to include a plan to prepare the child for the transition from out-of-home care to a successful adulthood (transition plan), and requiring a child's transition plan to include a document that describes the rights of the child with respect to education, health, visitation, and participation in juvenile court proceedings, the right of the child to receive identification documents and other important information as required under the bill, the right of the child to receive a copy of his or her credit report, and the right of the child to stay safe and to avoid exploitation. Current law requires a transition plan only for a child 15 years of age or over.

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6. Eliminating placement in sustaining care as a permanency goal for a child following a termination of parental rights. The bill, however, permits: a) a child 16 years of age or over who is in sustaining care under a sustaining care contract entered into before the effective date of the bill to remain in sustaining care until the termination date of the contract; and b) a child under 16 years of age who is in sustaining care under a sustaining care contract entered into before the effective date of the bill to remain in sustaining care until the next permanency plan review or hearing for the child, at which time the child's permanency plan must be amended to provide for a permanency goal other than placement in sustaining care.

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

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

- 1           **SECTION 1.** 20.437 (1) (cf) (title) of the statutes is amended to read:  
2           20.437 (1) (cf) (title) *Foster and family-operated group home parent insurance*  
3           *and liability.*
- 4           **SECTION 2.** 48.02 (1dm) of the statutes is created to read:  
5           48.02 (1dm) "Age or developmentally appropriate activities" means activities  
6           that are generally accepted as suitable for children of a given chronological age or  
7           level of maturity or that are determined to be developmentally appropriate for a child  
8           based on the cognitive, emotional, physical, and behavioral capacities that are  
9           typical for children of a given age or age group or, in the case of a specific child,  
10          activities that are suitable for the child based on the cognitive, emotional, physical,  
11          and behavioral capacities of that child.
- 12          **SECTION 3.** 48.02 (12r) of the statutes is created to read:  
13          48.02 (12r) "Out-of-home care provider" means a foster parent, guardian,  
14          relative other than a parent, or nonrelative in whose home a child is placed, or the  
15          operator of a group home, residential care center for children and youth, or shelter

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1 care facility in which a child is placed, under the placement and care responsibility  
2 of the department or a county department. “Out-of-home care provider” also  
3 includes, in the case of a child placed in a group home, residential care center for  
4 children and youth, or shelter care facility, a staff member employed on the site of  
5 that home, center, or facility who has been designated by the operator of that home,  
6 center, or facility as an out-of-home care provider for purposes of making decisions  
7 concerning the child’s participation in age or developmentally appropriate activities.

8 **SECTION 4.** 48.02 (14r) of the statutes is created to read:

9 48.02 (14r) “Reasonable and prudent parent standard” means a standard for  
10 an out-of-home care provider to use in making decisions concerning a child’s  
11 participation in age or developmentally appropriate extracurricular, enrichment,  
12 cultural, and social activities that is characterized by careful and sensible parental  
13 decisions that maintain the health, safety, best interests, and cultural, religious, and  
14 tribal values of the child while at the same time encouraging the emotional and  
15 developmental growth of the child.

16 **SECTION 5.** 48.14 (2) (b) of the statutes is amended to read:

17 48.14 (2) (b) The appointment and removal of a guardian of the person for a  
18 child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977, and  
19 48.978 and ch. 54 and for a child found to be in need of protection or services under  
20 s. 48.13 because the child is without parent or guardian.

21 **SECTION 6.** 48.366 (2) (b) 4. of the statutes, as affected by 2015 Wisconsin Act  
22 55, is amended to read:

23 48.366 (2) (b) 4. If the court determines that the person who is the subject of  
24 an order described in sub. (1) (a) or (b) understands that he or she may continue in  
25 out-of-home care, but wishes to be discharged from that care on termination of the

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1 order, the court shall advise the person that he or she may enter into a voluntary  
2 agreement under sub. (3) at any time before he or she is granted a high school or high  
3 school equivalency diploma or reaches 21 years of age, whichever occurs first, so long  
4 as he or she is a full-time student at a secondary school or its vocational or technical  
5 equivalent and an individualized education program under s. 115.787 is in effect for  
6 him or her. If the court determines that the person wishes to continue in  
7 out-of-home care under an extension of an order under s. 48.355, 48.357, or 48.365  
8 described in sub. (1) (a), the court shall schedule an extension hearing under s.  
9 48.365. If the court determines that the person wishes to continue in out-of-home  
10 care under a voluntary agreement under sub. (3), the court shall order the agency  
11 primarily responsible for providing services to the person under the order to provide  
12 transition-to-independent-living services for the person under ~~a~~ that voluntary  
13 agreement ~~under sub. (3)~~.

14 **SECTION 7.** 48.38 (2m) of the statutes is created to read:

15 48.38 (2m) CONSULTATION WITH CHILD 14 OR OVER. The agency responsible for  
16 preparing the permanency plan for a child 14 years of age or over shall prepare the  
17 plan and any revisions of the plan in consultation with the child and, at the option  
18 of the child, with not more than 2 persons selected by the child who are members of  
19 any child and family team convened for the child, except that the child may not select  
20 his or her caregiver or caseworker to consult in the preparation or revision of the  
21 permanency plan and the agency may reject a person selected by the child if the  
22 agency has good cause to believe that the person would not act in the best interests  
23 of the child. The agency may designate one of the persons selected by the child to be  
24 the child's adviser and, as necessary, the child's advocate, with respect to application

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1 of the reasonable and prudent parent standard to decisions concerning the child's  
2 participation in age or developmentally appropriate activities.

3 **SECTION 8.** 48.38 (4) (f) 3. of the statutes is amended to read:

4 48.38 (4) (f) 3. Improve the conditions of the parents' home to facilitate the safe  
5 return of the child to his or her home, or, if appropriate, obtain for the child a  
6 placement for adoption, with a guardian, or with a fit and willing relative, or, in the  
7 case of a child 16 years of age or over, obtain for the child, if appropriate, a placement  
8 in some other planned permanent living arrangement that includes an appropriate,  
9 enduring relationship with an adult.

10 **SECTION 9.** 48.38 (4) (fg) 5. of the statutes, as affected by 2015 Wisconsin Act  
11 55, is amended to read:

12 48.38 (4) (fg) 5. ~~As provided in par. (fm), placement in~~ In the case of a child 16  
13 years of age or over, placement of the child in some other planned permanent living  
14 arrangement that includes an appropriate, enduring relationship with an adult,  
15 including sustaining care, ~~or the goal of transitioning the child to independence.~~

16 **SECTION 10.** 48.38 (4) (fm) of the statutes, as affected by 2015 Wisconsin Act  
17 55, is amended to read:

18 48.38 (4) (fm) If the agency determines that there is a compelling reason why  
19 it currently would not be in the best interests of ~~the~~ a child 16 years of age or over  
20 to return the child to his or her home or to place the child for adoption, with a  
21 guardian, or with a fit and willing relative as the permanency goal for the child, the  
22 permanency goal of placing the child in some other planned permanent living  
23 arrangement ~~or of transitioning the child to independence as described in par. (fg)~~  
24 ~~5.~~ If the agency makes that determination, the plan shall include the efforts made  
25 to achieve that permanency goal, including, if appropriate, through an out-of-state



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1 placement, a statement of that compelling reason, and, notwithstanding that  
2 compelling reason, a concurrent plan under s. 48.355 (2b) towards achieving a goal  
3 under par. (fg) 1. to 4. as a concurrent permanency goal in addition to the permanency  
4 goal under par. (fg) 5. The plan shall also include a plan to ensure that the child has  
5 regular, ongoing opportunities to engage in age or developmentally appropriate  
6 activities determined in accordance with the reasonable and prudent parent  
7 standard.

8 **SECTION 11.** 48.38 (4) (h) (intro.) of the statutes is amended to read:

9 48.38 (4) (h) (intro.) If the child is ~~15~~ 14 years of age or over, ~~an independent~~  
10 ~~living a~~ plan describing the programs and services that are or will be provided to  
11 assist the child in preparing for the transition from out-of-home care to ~~independent~~  
12 ~~living a~~ successful adulthood. The plan shall include all of the following:

13 **SECTION 12.** 48.38 (4) (h) 2. of the statutes is amended to read:

14 48.38 (4) (h) 2. The anticipated amount of time available in which to prepare  
15 the child for the transition from out-of-home care to ~~independent living a~~ successful  
16 adulthood.

17 **SECTION 13.** 48.38 (4) (h) 4. of the statutes is amended to read:

18 48.38 (4) (h) 4. A description of the assessment processes, tools, and methods  
19 that have been or will be used to determine the programs and services that are or will  
20 be provided to assist the child in preparing for the transition from out-of-home care  
21 to ~~independent living a~~ successful adulthood.

22 **SECTION 14.** 48.38 (4) (h) 5. of the statutes is amended to read:

23 48.38 (4) (h) 5. The rationale for each program or service that is or will be  
24 provided to assist the child in preparing for the transition from out-of-home care to

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1 ~~independent living~~ a successful adulthood, the time frames for delivering those  
2 programs or services, and the intended outcome of those programs or services.

3 **SECTION 15.** 48.38 (4) (h) 6. of the statutes is created to read:

4 48.38 (4) (h) 6. Documentation that the plan was prepared in consultation with  
5 the child and any persons selected by the child as required under sub. (2m).

6 **SECTION 16.** 48.38 (4) (h) 7. of the statutes is created to read:

7 48.38 (4) (h) 7. A document that describes the rights of the child with respect  
8 to education, health, visitation, and participation in court proceedings, the right of  
9 the child to receive the documents and information specified in s. 48.385 (2), the right  
10 of the child to receive a copy of the child's consumer report, as defined in 15 USC  
11 1681a (d), and the right of the child to stay safe and to avoid exploitation, together  
12 with a signed acknowledgement by the child that he or she has been provided with  
13 a copy of that document and that the rights described in that document have been  
14 explained to him or her in an age-appropriate and developmentally appropriate way.

15 **SECTION 17.** 48.38 (5) (bm) 3. of the statutes is created to read:

16 48.38 (5) (bm) 3. If the permanency goal of the child's permanency plan is  
17 placement of the child in a planned permanent living arrangement described in sub.  
18 (4) (fg) 5., the agency that prepared the permanency plan shall present to the court  
19 or panel specific information showing that intensive and ongoing efforts were made  
20 by the agency, including searching social media, to return the child to the child's  
21 home or to place the child for adoption, with a guardian, or with a fit and willing  
22 relative and that those efforts have proved unsuccessful and specific information  
23 showing the steps taken by the agency, including consultation with the child, to  
24 ascertain whether the child has regular, ongoing opportunities to engage in age or  
25 developmentally appropriate activities and to ensure that the child's caregiver is

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1 applying the reasonable and prudent parent standard to decisions concerning the  
2 child's participation in those activities. In addition, at the review the court or panel  
3 shall consult with the child about the permanency outcome desired by the child.

4 **SECTION 18.** 48.38 (5) (c) 1. of the statutes is amended to read:

5 48.38 (5) (c) 1. The continuing necessity for and the safety and appropriateness  
6 of the placement. If the permanency goal of the child's permanency plan is placement  
7 of the child in a planned permanent living arrangement described in sub. (4) (fg) 5.,  
8 the determination under this subdivision shall include an explanation of why the  
9 planned permanent living arrangement is the best permanency goal for the child and  
10 why, supported by compelling reasons, it continues not to be in the best interests of  
11 the child to be returned to his or her home or to be placed for adoption, with a  
12 guardian, or with a fit and willing relative.

13 **SECTION 19.** 48.38 (5) (c) 6. d. of the statutes, as affected by 2015 Wisconsin Act  
14 55, is amended to read:

15 48.38 (5) (c) 6. d. Being placed in some other planned permanent living  
16 arrangement that includes an appropriate, enduring relationship with an adult,  
17 ~~including sustaining care, or transitioning to independence.~~

18 **SECTION 20.** 48.38 (5) (c) 7m. of the statutes is created to read:

19 48.38 (5) (c) 7m. If the permanency goal of the child's permanency plan is  
20 placement of the child in a planned permanent living arrangement described in sub.  
21 (4) (fg) 5., the steps taken by the agency, including consultation with the child, to  
22 ascertain whether the child has regular, ongoing opportunities to engage in age or  
23 developmentally appropriate activities and to ensure that the child's caregiver is  
24 applying the reasonable and prudent parent standard to decisions concerning the  
25 child's participation in those activities.

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1           **SECTION 21.** 48.38 (5) (c) 9. of the statutes, as affected by 2015 Wisconsin Act  
2 55, is amended to read:

3           48.38 **(5)** (c) 9. If the child is the subject of an order that terminates as provided  
4 in s. 48.355 (4) (b) 4., 48.357 (6) (a) 4. or 48.365 (5) (b) 4. or of a voluntary  
5 transition-to-independent-living agreement under s. 48.366 (3), the  
6 appropriateness of the transition-to-independent-living plan developed under s.  
7 48.385 (1); the extent of compliance with that plan by the child, the child's guardian,  
8 if any, the agency primarily responsible for providing services under that plan, and  
9 any other service providers; and the progress of the child toward making the  
10 transition to ~~independent living~~ a successful adulthood.

11           **SECTION 22.** 48.38 (5m) (c) 3. of the statutes is created to read:

12           48.38 **(5m)** (c) 3. If the permanency goal of the child's permanency plan is  
13 placement of the child in a planned permanent living arrangement described in sub.  
14 (4) (fg) 5., the agency that prepared the permanency plan shall present to the court  
15 specific information showing that intensive and ongoing efforts were made by the  
16 agency, including searching social media, to return the child to the child's home or  
17 to place the child for adoption, with a guardian, or with a fit and willing relative and  
18 that those efforts have proved unsuccessful and specific information showing the  
19 steps taken by the agency, including consultation with the child, to ascertain  
20 whether the child has regular, ongoing opportunities to engage in age or  
21 developmentally appropriate activities and to ensure that the child's caregiver is  
22 applying the reasonable and prudent parent standard to decisions concerning the  
23 child's participation in those activities. In addition, at the hearing the court shall  
24 consult with the child about the permanency outcome desired by the child.

25           **SECTION 23.** 48.383 of the statutes is created to read:

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1           **48.383 Reasonable and prudent parent standard. (1) USE OF STANDARD**  
2 BY OUT-OF-HOME CARE PROVIDERS. An out-of-home care provider shall use the  
3 reasonable and prudent parent standard in making decisions concerning a child's  
4 participation in age or developmentally appropriate extracurricular, enrichment,  
5 cultural, and social activities. In making decisions using the reasonable and prudent  
6 parent standard, an out-of-home care provider shall consider the restrictiveness of  
7 the child's placement and whether the child has the necessary training and safety  
8 equipment to safely participate in the activity under consideration and may not  
9 make any decision that is in violation of any court order or any state or federal law,  
10 rule, or regulation.

11           **(2) CHILD-SPECIFIC CONSIDERATIONS REQUIRED. (a)** At the time of placement of  
12 a child with an out-of-home care provider, the agency that places, or that arranges  
13 the placement of, the child or the agency assigned primary responsibility for  
14 providing services to the child under s. 48.355 (2) (b) 6g. shall provide to the  
15 out-of-home care provider the information that is required to be provided to an  
16 out-of-home care provider under the rules promulgated under s. 895.485 (4) (a) and  
17 information that is specific to the child for the out-of-home care provider to consider  
18 in making reasonable and prudent parenting decisions concerning the child's  
19 participation in age or developmentally appropriate extracurricular, enrichment,  
20 cultural, and social activities. In preparing that information or any revisions of that  
21 information, the agency shall do all of the following:

22           1. If reasonably possible to do so, consult with the child's parent concerning the  
23 child's participation in extracurricular, enrichment, cultural, and social activities  
24 and the child's cultural, religious, and tribal values and advise the parent that those

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1 values will be considered, but will not necessarily be the determining factor, in  
2 making decisions concerning the child's participation in those activities.

3 2. Consult with the child in an age-appropriate manner about the  
4 opportunities of the child to participate in age or developmentally appropriate  
5 activities.

6 (b) At the time of placement of a child with an out-of-home care provider, the  
7 agency providing the information under par. (a) shall explain to the out-of-home  
8 care provider the parameters of the considerations that the out-of-home care  
9 provider is required to take into account when making decisions concerning the  
10 child's participation in age or developmentally appropriate extracurricular,  
11 enrichment, cultural, and social activities. In explaining those parameters, the  
12 agency shall explain the considerations and prohibitions specified in sub. (1) and  
13 shall advise the out-of-home care provider that in case of any disagreement over the  
14 application of the reasonable and prudent parent standard, the agency having  
15 placement and care responsibility for the child is ultimately responsible for decisions  
16 concerning the care of the child.

17 (c) In preparing or revising the permanency plan for a child, the agency  
18 responsible for preparing or revising the permanency plan shall consult with the  
19 child and the child's parent as provided in par. (a) 1. and 2. At the time the  
20 permanency plan is prepared and each time the permanency plan is revised, that  
21 agency shall explain to the out-of-home care provider the parameters of the  
22 considerations that the out-of-home care provider is required to take into account  
23 when making decisions concerning the child's participation in age or  
24 developmentally appropriate extracurricular, enrichment, cultural, and social  
25 activities as provided in par. (b).

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1           **(3) RULES.** The department shall promulgate rules to implement this section.

2           **SECTION 24.** 48.385 of the statutes, as affected by 2015 Wisconsin Act 55, is  
3           renumbered 48.385 (intro.) and amended to read:

4           **48.385 Plan for transition to independent living.** (intro.) During the 90  
5           days immediately before a child who is placed in a foster home, group home, or  
6           residential care center for children and youth, in the home of a relative other than  
7           a parent, or in a supervised independent living arrangement attains 18 years of age  
8           or, if the child is placed in such a placement under an order under s. 48.355, 48.357,  
9           or 48.365 that terminates under s. 48.355 (4) (b) after the child attains 18 years of  
10          age or under a voluntary transition-to-independent-living agreement under s.  
11          48.366 (3) that terminates under s. 48.366 (3) (a) after the child attains 18 years of  
12          age, during the 90 days immediately before the termination of the order or  
13          agreement, the agency primarily responsible for providing services to the child under  
14          the order or agreement shall ~~provide~~ do all of the following:

15          **(1) TRANSITION PLAN.** Provide the child with assistance and support in  
16          developing a plan for making the transition from out-of-home care to independent  
17          living. The transition plan shall be personalized at the direction of the child, shall  
18          be as detailed as the child directs, and shall include specific options for obtaining  
19          housing, health care, education, mentoring and continuing support services, and  
20          workforce support and employment services.

21          **SECTION 25.** 48.385 (2) of the statutes is created to read:

22          48.385 **(2) IDENTIFICATION DOCUMENTS AND OTHER INFORMATION.** Except as  
23          provided in this subsection, ensure that the child is in possession of a certified copy  
24          of the child's birth certificate, a social security card issued by the federal social  
25          security administration, information on maintaining health care coverage, a copy of

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1 the child's health care records, and either an operator's license issued under ch. 343  
2 or an identification card issued under s. 343.50. If the child is not in possession of  
3 any of those documents or that information, the agency shall assist the child in  
4 obtaining any missing document or information. This subsection does not apply to  
5 a child who has been placed in out-of-home care for less than 6 months.

6 **SECTION 26.** 48.427 (1) of the statutes is amended to read:

7 48.427 (1) Any party may present evidence relevant to the issue of disposition,  
8 including expert testimony, and may make alternative dispositional  
9 recommendations to the court. After receiving any evidence related to the  
10 disposition, the court shall enter one of the dispositions specified under subs. (2) to  
11 (4) (3p) within 10 days.

12 **SECTION 27.** 48.427 (4) of the statutes is repealed.

13 **SECTION 28.** 48.427 (5) of the statutes is amended to read:

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

20 **SECTION 29.** 48.428 of the statutes is repealed.

21 **SECTION 30.** 48.43 (4) of the statutes is amended to read:

22 48.43 (4) A certified copy of the order terminating parental rights shall be  
23 furnished by the court to the agency given guardianship for placement for adoption  
24 of the child or ~~to the person or agency given custodianship or guardianship for~~  
25 ~~placement of the child in sustaining care and to the person appointed as the guardian~~



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1 of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy  
2 of the child's birth certificate and a transcript of the testimony in the termination of  
3 parental rights hearing to the same person or agency.

4 **SECTION 31.** 48.43 (5) (b) 2m. of the statutes is created to read:

5 48.43 (5) (b) 2m. If the permanency goal of the child's permanency plan is  
6 placement of the child in a planned permanent living arrangement described in ss.  
7 48.38 (4) (fg) 5., the agency that prepared the report shall present to the court specific  
8 information showing that intensive and ongoing efforts were made by the agency,  
9 including searching social media, to return the child to the child's home or to place  
10 the child for adoption, with a guardian, or with a fit and willing relative and that  
11 those efforts have proved unsuccessful and specific information showing the steps  
12 taken by the agency, including consultation with the child, to ascertain whether the  
13 child has regular, ongoing opportunities to engage in age or developmentally  
14 appropriate activities and to ensure that the child's caregiver is applying the  
15 reasonable and prudent parent standard to decisions concerning the child's  
16 participation in those activities. In addition, at the hearing the court shall consult  
17 with the child about the permanency outcome desired by the child.

18 **SECTION 32.** 48.481 (2) of the statutes is amended to read:

19 48.481 (2) ~~TRANSITION TO INDEPENDENT LIVING~~ A SUCCESSFUL ADULTHOOD. The  
20 department shall distribute at least \$231,700 in each fiscal year for the purpose of  
21 assisting individuals who attain the age of 18 while residing in a foster home, group  
22 home, or residential care center for children and youth, in the home of a relative other  
23 than a parent, or in a supervised independent living arrangement to make the  
24 transition from out-of-home care to ~~independent living~~ a successful adulthood. No

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1 county may use funds provided under this subsection to replace funds previously  
2 used by the county for this purpose.

3 **SECTION 33.** 48.627 (title) of the statutes is amended to read:

4 **48.627 (title) Foster and family-operated group home parent insurance**  
5 **and liability.**

6 **SECTION 34.** 48.627 (1) of the statutes is repealed.

7 **SECTION 35.** 48.627 (2) (a) of the statutes is amended to read:

8 48.627 (2) (a) Before the department, a county department, or a licensed child  
9 welfare agency may issue, renew, or continue a foster home ~~or family-operated group~~  
10 ~~home~~ license, the licensing agency shall require the applicant to furnish proof  
11 satisfactory to the licensing agency that he or she has homeowner's or renter's  
12 liability insurance that provides coverage for negligent acts or omissions by children  
13 placed in a foster home ~~or family-operated group home~~ that result in bodily injury  
14 or property damage to 3rd parties.

15 **SECTION 36.** 48.627 (2c) of the statutes is amended to read:

16 48.627 (2c) The department shall determine the cost-effectiveness of  
17 purchasing private insurance that would provide coverage to foster ~~and~~  
18 ~~family-operated group home~~ parents for acts or omissions by or affecting a child who  
19 is placed in a foster home ~~or a family-operated group home~~. If this private insurance  
20 is cost-effective and available, the department shall purchase the insurance from  
21 the appropriations under s. 20.437 (1) (cf) and (pd). If the insurance is unavailable,  
22 payment of claims for acts or omissions by or affecting a child who is placed in a foster  
23 home ~~or a family-operated group home~~ shall be in accordance with subs. (2m) to (3).

24 **SECTION 37.** 48.627 (2m) of the statutes is amended to read:

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1           48.627 **(2m)** Within the limits of the appropriations under s. 20.437 (1) (cf) and  
2           (pd), the department shall pay claims to the extent not covered by any other  
3           insurance and subject to the limitations specified in sub. (3), for bodily injury or  
4           property damage sustained by a licensed foster ~~or family-operated group home~~  
5           parent or a member of the foster ~~or family-operated group home~~ parent's family as  
6           a result of the act of a child in the foster ~~or family-operated group home~~ parent's care  
7           or as a result of an act or omission of the foster parent in granting permission for a  
8           child in the foster parent's care to participate in an age or developmentally  
9           appropriate activity.

10           **SECTION 38.** 48.627 (2s) (a) of the statutes is amended to read:

11           48.627 **(2s)** (a) Acts or omissions of the foster ~~or family-operated group home~~  
12           parent that result in bodily injury to the child who is placed in the foster home ~~or~~  
13           ~~family-operated group home~~ or that form the basis for a civil action for damages by  
14           the foster child's parent against the foster ~~or family-operated group home~~ parent.

15           **SECTION 39.** 48.627 (2s) (am) of the statutes is created to read:

16           48.627 **(2s)** (am) Acts or omission of the foster parent in granting permission  
17           for a child who is placed in the foster home to participate in an age or developmentally  
18           appropriate activity.

19           **SECTION 40.** 48.627 (2s) (b) of the statutes is amended to read:

20           48.627 **(2s)** (b) Bodily injury or property damage caused by an act or omission  
21           of a child who is placed in the foster ~~or family-operated group home~~ parent's care for  
22           which the foster ~~or family-operated group home~~ parent becomes legally liable.

23           **SECTION 41.** 48.627 (3) (b) of the statutes is amended to read:

24           48.627 **(3)** (b) A claim under sub. (2m) shall be submitted to the department  
25           within 90 days after the bodily injury or property damage occurs. A claim under sub.

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1 (2s) shall be submitted to the department within 90 days after a foster ~~or~~  
2 ~~family-operated group home~~ parent learns that a legal action has been commenced  
3 against that parent. No claim may be paid under this subsection unless it is  
4 submitted within the time limits specified in this paragraph.

5 **SECTION 42.** 48.627 (3) (d) of the statutes is amended to read:

6 48.627 (3) (d) No claim may be approved in an amount exceeding the total  
7 amount available for paying claims under this subsection in the fiscal year during  
8 which the claim is submitted. No claim for property damage sustained by a foster  
9 ~~or family-operated group home~~ parent or a member of a foster ~~or family-operated~~  
10 ~~group home~~ parent's family may be approved in an amount exceeding \$250,000.

11 **SECTION 43.** 48.627 (3) (e) of the statutes is amended to read:

12 48.627 (3) (e) The department may not approve a claim unless the foster ~~or~~  
13 ~~family-operated group home~~ parent submits with the claim evidence that is  
14 satisfactory to the department of the cause and value of the claim and evidence that  
15 insurance coverage is unavailable or inadequate to cover the claim. If insurance is  
16 available but inadequate, the department may approve a claim only for the amount  
17 of the value of the claim that ~~it~~ the department determines is in excess of the amount  
18 covered by insurance.

19 **SECTION 44.** 48.627 (3) (f) of the statutes is amended to read:

20 48.627 (3) (f) If the total amount of the claims approved during any calendar  
21 quarter exceeds ~~25%~~ 25 percent of the total funds available during the fiscal year for  
22 purposes of this subsection plus any unencumbered funds remaining from the  
23 previous quarter, the department shall prorate the available funds among the  
24 claimants with approved claims. The department shall also prorate any  
25 unencumbered funds remaining in the appropriation under s. 20.437 (1) (cf) at the

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1 end of each fiscal year among the claimants whose claims were prorated during the  
2 fiscal year. Payment of a prorated amount from unencumbered funds remaining at  
3 the end of the fiscal year constitutes a complete payment of the claim for purposes  
4 of this program, but does not prohibit a foster parent ~~or family-operated group home~~  
5 ~~parent~~ from submitting a claim under s. 16.007 for the unpaid portion.

6 **SECTION 45.** 48.627 (3) (h) of the statutes is amended to read:

7 48.627 (3) (h) If a claim by a foster ~~or family-operated group home~~ parent or  
8 a member of the foster ~~or family-operated group home~~ parent's family is approved,  
9 the department shall deduct from the amount approved \$100 less any amount  
10 deducted by an insurance company from a payment for the same claim, except that  
11 a foster ~~or family-operated group home~~ parent and his or her family are subject to  
12 only one deductible for all claims filed in a fiscal year.

13 **SECTION 46.** 48.627 (4) of the statutes is amended to read:

14 48.627 (4) Except as provided in s. 895.485, the department is not liable for any  
15 act or omission by or affecting a child who is placed in a foster home ~~or~~  
16 ~~family-operated group home~~, but shall, as provided in this section, pay claims  
17 described under sub. (2m) and may pay claims described under sub. (2s) or may  
18 purchase insurance to cover such claims as provided for under sub. (2c), within the  
19 limits of the appropriations under s. 20.437 (1) (cf) and (pd).

20 **SECTION 47.** 48.647 (3) (d) of the statutes is amended to read:

21 48.647 (3) (d) Ensure that an eligible person receiving services from the private  
22 agency's program is provided with intake, assessment, case planning, and case  
23 management services; skills development training in the areas of economic  
24 self-sufficiency, parenting, independent successful adult living, and life choice  
25 decision making; prenatal and other health care services, including, if necessary,

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1 mental health and alcohol and other drug abuse services; child care; and  
2 transportation.

3 **SECTION 48.** 48.647 (4) of the statutes is amended to read:

4 48.647 (4) EVALUATION. From the appropriation under s. 20.437 (1) (f), the  
5 department shall conduct or shall select an evaluator to conduct an evaluation of the  
6 grant program under this section and, by June 1 of the 3rd calendar year beginning  
7 after the year in which the first grant under this section is awarded, shall submit a  
8 report on that evaluation to the governor and to the appropriate standing committees  
9 under s. 13.172 (3). The evaluation shall measure the economic self-sufficiency,  
10 parenting skills, independent successful adult living skills, and life choice  
11 decision-making skills of the eligible persons who received services under the  
12 program and any other criteria that the department determines to be appropriate for  
13 evaluation.

14 **SECTION 49.** 48.67 (4) (a) 1m. of the statutes is created to read:

15 48.67 (4) (a) 1m. Knowledge and skills relating to the use of the reasonable and  
16 prudent parent standard in making decisions concerning a child's participation in  
17 age or developmentally appropriate activities including knowledge and skills  
18 relating to the stages in the development of cognitive, emotional, physical, and  
19 behavioral capacities of children and knowledge and skills relating to applying that  
20 standard in making decisions regarding a child's participation in extracurricular,  
21 enrichment, cultural, or social activities, such as sports, field trips, overnight, and  
22 other recreational activities, in making decisions involving the signing of permission  
23 slips and the arrangement of transportation to and from those activities, and in  
24 making decisions regarding the child's choices with respect to transportation,  
25 employment, peer relationships, and personal expression. Those rules shall require

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1 a foster parent who has received that training to make reasonable and prudent  
2 parenting decisions in accordance with the reasonable and prudent parent standard.

3 **SECTION 50.** 48.67 (5) of the statutes is created to read:

4 48.67 (5) That all child welfare agencies that operate a residential care center  
5 for children and youth, all group homes, and all shelter care facilities employ on the  
6 site of the center, group home, or shelter care facility at all times a staff member  
7 designated as an out-of-home care provider for purposes of making decisions  
8 concerning the participation of a child placed in the center, group home, or shelter  
9 care facility in age or developmentally appropriate activities. Those rules shall also  
10 require an out-of-home care provider so designated to receive training in knowledge  
11 and skills relating to the use of the reasonable and prudent parent standard in  
12 making decisions concerning a child's participation in age or developmentally  
13 appropriate activities. In addition, those rules shall require an out-of-home care  
14 provider so trained to make reasonable and prudent parenting decisions in  
15 accordance with the reasonable and prudent parent standard.

16 **SECTION 51.** 48.977 (7) (e) of the statutes is amended to read:

17 48.977 (7) (e) *Termination on termination of parental rights.* If a court enters  
18 an order under s. 48.427 (3p) ~~or 48.428 (2) (b)~~, the court shall terminate the  
19 guardianship under this section.

20 **SECTION 52.** 49.34 (4) (a) of the statutes is amended to read:

21 49.34 (4) (a) Except as provided in this subsection, maintain a uniform double  
22 entry accounting system and a management information system ~~which~~ that are  
23 compatible with cost accounting and control systems prescribed by the department.  
24 ~~The department shall establish a simplified double-entry bookkeeping system for~~  
25 ~~use by family-operated group homes. Each purchaser shall determine whether a~~

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1 ~~family-operated group home from which it purchases services shall use the~~  
2 ~~double-entry accounting system or the simplified system and shall include this~~  
3 ~~determination in the purchase of service contract. In this paragraph,~~  
4 ~~“family-operated group home” means a group home licensed under s. 48.66 (1) (a) for~~  
5 ~~which the licensee is one or more individuals who operate not more than one group~~  
6 ~~home.~~

7 **SECTION 53.** 49.34 (4) (c) of the statutes is amended to read:

8 49.34 (4) (c) Unless waived by the department, biennially, or annually if  
9 required under federal law, provide the purchaser with a certified financial and  
10 compliance audit report if the care and services purchased exceed \$25,000. The audit  
11 shall follow standards that the department prescribes. ~~A purchaser may waive the~~  
12 ~~requirements of this paragraph for any family-operated group home, as defined in~~  
13 ~~par. (a), from which it purchases services.~~

14 **SECTION 54.** 115.76 (12) (a) 8. of the statutes is repealed.

15 **SECTION 55.** 167.10 (7) of the statutes is amended to read:

16 167.10 (7) PARENTAL LIABILITY. A parent, foster parent, ~~family-operated group~~  
17 ~~home parent, or legal guardian, or other out-of-home care provider, as defined in s.~~  
18 ~~48.02 (12r),~~ of a minor who consents to the use of fireworks by the minor is liable for  
19 damages caused by the minor's use of the fireworks.

20 **SECTION 56.** 809.107 (2) (bm) (intro.) of the statutes is amended to read:

21 809.107 (2) (bm) *Notice of intent to pursue postdisposition or appellate relief.*  
22 (intro.) A person shall initiate an appeal under this section by filing, within 30 days  
23 after the date of entry of the judgment or order appealed from, as specified in s.  
24 808.04 (7m), a notice of intent to pursue postdisposition or appellate relief with the  
25 clerk of the circuit court in which the judgment or order appealed from was entered.



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1 Also within that time period, the appellant shall serve a copy of the notice of intent  
2 on the person representing the interests of the public, opposing counsel, the guardian  
3 ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the  
4 proceeding, the child's parent and any guardian and any custodian appointed under  
5 s. 48.427 (3) ~~or 48.428 (2)~~. If the record discloses that final adjudication occurred  
6 after the notice of intent was filed, the notice shall be treated as filed after entry of  
7 the judgment or order appealed from on the day of the entry of the final judgment  
8 or order. The notice of intent shall include all of the following:

9 **SECTION 57.** 895.485 (title) of the statutes is amended to read:

10 **895.485 (title) Civil liability exemption; out-of-home care providers**  
11 **and child-placing agencies, foster parents and family-operated group**  
12 **home parents.**

13 **SECTION 58.** 895.485 (1) (title) of the statutes is created to read:

14 895.485 (1) (title) DEFINITIONS.

15 **SECTION 59.** 895.485 (1) (a) of the statutes is repealed.

16 **SECTION 60.** 895.485 (1) (ag) of the statutes is created to read:

17 895.485 (1) (ag) "Age or developmentally appropriate activities" has the  
18 meaning given in s. 48.02 (1dm).

19 **SECTION 61.** 895.485 (1) (c) of the statutes is created to read:

20 895.485 (1) (c) "Out-of-home care provider" has the meaning given in s. 48.02  
21 (12r).

22 **SECTION 62.** 895.485 (1) (d) of the statutes is created to read:

23 895.485 (1) (d) "Reasonable and prudent parent standard" has the meaning  
24 given in s. 48.02 (14r).

25 **SECTION 63.** 895.485 (2) of the statutes is amended to read:

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1           895.485 (2) FOSTER PARENTS; LIABILITY EXEMPTION. Except as provided in ss.  
2           167.10 (7) and 343.15 (2), any foster ~~or family-operated group~~ home parent licensed  
3           under s. 48.62 ~~or 48.625~~ is immune from civil liability for any of the following:

4           (a) An act or omission of the foster ~~or family-operated group~~ home parent while  
5           that parent is acting in his or her capacity as a foster ~~or family-operated group~~ home  
6           parent.

7           (b) An act or omission of a child who is placed in a foster home ~~or~~  
8           ~~family-operated group~~ home while the child is in the foster ~~or family-operated group~~  
9           home parent's care.

10          **SECTION 64.** 895.485 (3) of the statutes is amended to read:

11          895.485 (3) FOSTER PARENTS; EXCEPTIONS TO LIABILITY EXEMPTION. The immunity  
12          specified in sub. (2) does not apply if the act or omission of a foster ~~or family-operated~~  
13          ~~group home~~ parent was not done in good faith or was not in compliance with any  
14          written instructions received from the agency that placed the child regarding specific  
15          care and supervision of the child. The good faith of a foster ~~or family-operated group~~  
16          home parent and the compliance of the foster ~~or family-operated group~~ home parent  
17          with any written instructions received from the agency that placed the child are  
18          presumed in a civil action. Any person who asserts that a foster ~~or family-operated~~  
19          ~~group home~~ parent did not act in good faith, or did not comply with written  
20          instructions received from the agency that placed the child, has the burden of proving  
21          that assertion.

22          **SECTION 65.** 895.485 (4) (intro.) of the statutes is amended to read:

23          895.485 (4) CHILD-PLACING AGENCIES; LIABILITY EXEMPTION; EXCEPTIONS. (intro.)  
24          Any agency that acts in good faith in placing a child with a foster ~~or family-operated~~  
25          ~~group home~~ parent is immune from civil liability for any act or omission of the agency,

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1 the foster ~~or family-operated group home~~ parent, or the child unless all of the  
2 following occur:

3 **SECTION 66.** 895.485 (4) (a) of the statutes is amended to read:

4 895.485 (4) (a) The agency has failed to provide the foster ~~or family-operated~~  
5 ~~group home~~ parent with any information relating to a medical, physical, mental, or  
6 emotional condition of the child that ~~it~~ the agency is required to disclose under this  
7 paragraph. The department of children and families shall promulgate rules  
8 specifying the kind of information that an agency shall disclose to a foster ~~or~~  
9 ~~family-operated group home~~ parent that relates to a medical, physical, mental, or  
10 emotional condition of the child.

11 **SECTION 67.** 895.485 (5) and (6) of the statutes are created to read:

12 895.485 (5) OUT-OF-HOME CARE PROVIDERS; LIABILITY EXEMPTION. Except as  
13 provided in ss. 167.10 (7) and 343.15 (2), an out-of-home care provider who grants  
14 permission for a child in the care of the out-of-home care provider to participate in  
15 an age or developmentally appropriate activity is immune from civil liability for any  
16 act or omission of the out-of-home care provider in granting that permission if in  
17 granting that permission the out-of-home care provider applied the reasonable and  
18 prudent parent standard in accordance with the requirements of ss. 48.383 (1) and  
19 938.383 (1) and the rules promulgated under ss. 48.383 (3) and 938.383 (3). The  
20 immunity provided under this subsection applies only to the decision granting that  
21 permission itself and does not extend to any other act or omission of the out-of-home  
22 care provider, including any act or omission relating to the out-of-home care  
23 provider's duty to comply with any provision of licensure under s. 48.70, rule  
24 promulgated under s. 48.67, or any other statute, rule, or regulation that is  
25 applicable to the out-of-home care provider's duty to protect the health, safety, and

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1 welfare of the child. The immunity provided under this subsection does not affect any  
2 immunity from, limitation on, or defense to liability that is available under any other  
3 statute or the common law.

4 **(6) OUT-OF-HOME CARE PROVIDERS; LIABILITY EXEMPTION; PRESUMPTIONS.** An  
5 out-of-home care provider who grants permission for a child in the care of the  
6 out-of-home care provider to participate in an age or developmentally appropriate  
7 activity is presumed to have applied the reasonable and prudent parent standard in  
8 granting that permission. Any person who asserts that an out-of-home care  
9 provider did not apply the reasonable and prudent parent standard in granting that  
10 permission has the burden of proving that assertion.

11 **SECTION 68.** 938.02 (1g) of the statutes is created to read:

12 938.02 **(1g)** “Age or developmentally appropriate activities” means activities  
13 that are generally accepted as suitable for juveniles of a given chronological age or  
14 level of maturity or that are determined to be developmentally appropriate for a  
15 juvenile based on the cognitive, emotional, physical, and behavioral capacities that  
16 are typical for juveniles of a given age or age group or, in the case of a specific juvenile,  
17 activities that are suitable for the juvenile based on the cognitive, emotional,  
18 physical, and behavioral capacities of that juvenile.

19 **SECTION 69.** 938.02 (12r) of the statutes is created to read:

20 938.02 **(12r)** “Out-of-home care provider” means a foster parent, guardian,  
21 relative other than a parent, or nonrelative in whose home a juvenile is placed, or the  
22 operator of a group home, residential care center for children and youth, or shelter  
23 care facility in which a juvenile is placed, under the placement and care  
24 responsibility of the department of children and families, the department of  
25 corrections, or a county department. “Out-of-home care provider” also includes, in

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1 the case of a juvenile placed in a group home, residential care center for children and  
2 youth, or shelter care facility, a staff member employed on the site of that home,  
3 center, or facility who has been designated by the operator of that home, center, or  
4 facility as an out-of-home care provider for purposes of making decisions concerning  
5 the juvenile's participation in age or developmentally appropriate activities.

6 **SECTION 70.** 938.02 (14r) of the statutes is created to read:

7 938.02 (14r) "Reasonable and prudent parent standard" means a standard for  
8 an out-of-home care provider to use in making decisions concerning a juvenile's  
9 participation in age or developmentally appropriate extracurricular, enrichment,  
10 cultural, and social activities that is characterized by careful and sensible parental  
11 decisions that maintain the health, safety, best interests, and cultural, religious, and  
12 tribal values of the juvenile while at the same time encouraging the emotional and  
13 developmental growth of the juvenile.

14 **SECTION 71.** 938.366 (2) (b) 4. of the statutes, as affected by 2015 Wisconsin Act  
15 55, is amended to read:

16 938.366 (2) (b) 4. If the court determines that the person who is the subject of  
17 an order described in sub. (1) (a) understands that he or she may continue in  
18 out-of-home care, but wishes to be discharged from that care on termination of the  
19 order, the court shall advise the person that he or she may enter into a voluntary  
20 agreement under sub. (3) at any time before he or she is granted a high school or high  
21 school equivalency diploma or reaches 21 years of age, whichever occurs first, so long  
22 as he or she is a full-time student at a secondary school or its vocational or technical  
23 equivalent and an individualized education program under s. 115.787 is in effect for  
24 him or her. If the court determines that the person wishes to continue in  
25 out-of-home care under an extension of the order described in sub. (1) (a), the court

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1 shall schedule an extension hearing under s. 938.365. If the court determines that  
2 the person wishes to continue in out-of-home care under a voluntary agreement  
3 under sub. (3), the court shall order the agency primarily responsible for providing  
4 services to the person under the order to provide transition-to-independent-living  
5 services for the person under ~~a~~ that voluntary agreement ~~under sub. (3)~~.

6 **SECTION 72.** 938.38 (2m) of the statutes is created to read:

7 938.38 (2m) CONSULTATION WITH JUVENILE 14 OR OVER. The agency responsible  
8 for preparing the permanency plan for a juvenile 14 years of age or over shall prepare  
9 the plan and any revisions of the plan in consultation with the juvenile and, at the  
10 option of the juvenile, with not more than 2 persons selected by the juvenile who are  
11 members of any child and family team convened for the juvenile, except that the  
12 juvenile may not select his or her caregiver or caseworker to consult in the  
13 preparation or revision of the permanency plan and the agency may reject a person  
14 selected by the juvenile if the agency has good cause to believe that the person would  
15 not act in the best interests of the juvenile. The agency may designate one of the  
16 persons selected by the juvenile to be the juvenile's adviser and, as necessary, the  
17 juvenile's advocate, with respect to application of the reasonable and prudent parent  
18 standard to decisions concerning the juvenile's participation in age or  
19 developmentally appropriate activities.

20 **SECTION 73.** 938.38 (4) (f) 3. of the statutes is amended to read:

21 938.38 (4) (f) 3. Improve the conditions of the parents' home to facilitate the safe  
22 return of the juvenile to his or her home, or, if appropriate, obtain for the juvenile a  
23 placement for adoption, with a guardian, or with a fit and willing relative, or, in the  
24 case of a juvenile 16 years of age or over, obtain for the juvenile, if appropriate, a

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1 placement in some other planned permanent living arrangement that includes an  
2 appropriate, enduring relationship with an adult.

3 **SECTION 74.** 938.38 (4) (fg) 5. of the statutes, as affected by 2015 Wisconsin Act  
4 55, is amended to read:

5 938.38 (4) (fg) 5. ~~As provided in par. (fm),~~placement in In the case of a juvenile  
6 16 years of age or over, placement of the juvenile in some other planned permanent  
7 living arrangement that includes an appropriate, enduring relationship with an  
8 adult, ~~including sustaining care, or the goal of transitioning the juvenile to~~  
9 ~~independence.~~

10 **SECTION 75.** 938.38 (4) (fm) of the statutes, as affected by 2015 Wisconsin Act  
11 55, is amended to read:

12 938.38 (4) (fm) If the agency determines that there is a compelling reason why  
13 it currently would not be in the best interests of the a juvenile 16 years of age or over  
14 to return the juvenile to his or her home or to place the juvenile for adoption, with  
15 a guardian, or with a fit and willing relative as the permanency goal for the juvenile,  
16 the permanency goal of placing the juvenile in some other planned permanent living  
17 arrangement ~~or of transitioning the juvenile to independence as described in par. (fg)~~  
18 ~~5.~~ If the agency makes that determination, the plan shall include the efforts made  
19 to achieve that permanency goal, including, if appropriate, through an out-of-state  
20 placement, a statement of that compelling reason, and, notwithstanding that  
21 compelling reason, a concurrent plan under s. 938.355 (2b) towards achieving a goal  
22 under par. (fg) 1. to 4. as a concurrent permanency goal in addition to the permanency  
23 goal under par. (fg) 5. The plan shall also include a plan to ensure that the juvenile  
24 has regular, ongoing opportunities to engage in age or developmentally appropriate

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1 activities determined in accordance with the reasonable and prudent parent  
2 standard.

3 **SECTION 76.** 938.38 (4) (h) (intro.) of the statutes is amended to read:

4 938.38 (4) (h) (intro.) If the juvenile is ~~15~~ 14 years of age or older, an  
5 ~~independent living~~ a plan describing the programs and services that are or will be  
6 provided to assist the juvenile in preparing for the transition from out-of-home care  
7 to ~~independent living~~ a successful adulthood. The plan shall include all of the  
8 following:

9 **SECTION 77.** 938.38 (4) (h) 2. of the statutes is amended to read:

10 938.38 (4) (h) 2. The anticipated amount of time available in which to prepare  
11 the juvenile for the transition from out-of-home care to ~~independent living~~ a  
12 successful adulthood.

13 **SECTION 78.** 938.38 (4) (h) 4. of the statutes is amended to read:

14 938.38 (4) (h) 4. A description of the assessment processes, tools, and methods  
15 that have been or will be used to determine the programs and services that are or will  
16 be provided to assist the juvenile in preparing for the transition from out-of-home  
17 care to ~~independent living~~ a successful adulthood.

18 **SECTION 79.** 938.38 (4) (h) 5. of the statutes is amended to read:

19 938.38 (4) (h) 5. The rationale for each program or service that is or will be  
20 provided to assist the juvenile in preparing for the transition from out-of-home care  
21 to ~~independent living~~ a successful adulthood, the time frames for delivering those  
22 programs or services, and the intended outcome of those programs or services.

23 **SECTION 80.** 938.38 (4) (h) 6. of the statutes is created to read:



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1           938.38 (4) (h) 6. Documentation that the plan was prepared in consultation  
2           with the juvenile and any persons selected by the juvenile as required under sub.  
3           (2m).

4           **SECTION 81.** 938.38 (4) (h) 7. of the statutes is created to read:

5           938.38 (4) (h) 7. A document that describes the rights of the juvenile with  
6           respect to education, health, visitation, and participation in court proceedings, the  
7           right of the juvenile to receive the documents and information specified in s. 938.385  
8           (2), the right of the juvenile to receive a copy of the juvenile's consumer report, as  
9           defined in 15 USCa (d), and the right of the juvenile to stay safe and to avoid  
10          exploitation, together with a signed acknowledgement by the juvenile that he or she  
11          has been provided with a copy of that document and that the rights described in that  
12          document have been explained to him or her in an age-appropriate and  
13          developmentally appropriate way.

14          **SECTION 82.** 938.38 (5) (bm) 3. of the statutes is created to read:

15          938.38 (5) (bm) 3. If the permanency goal of the juvenile's permanency plan is  
16          placement of the juvenile in a planned permanent living arrangement described in  
17          sub. (4) (fg) 5., the agency that prepared the permanency plan shall present to the  
18          court or panel specific information showing that intensive and ongoing efforts were  
19          made by the agency, including searching social media, to return the juvenile to the  
20          juvenile's home or to place the juvenile for adoption, with a guardian, or with a fit  
21          and willing relative and that those efforts have proved unsuccessful and specific  
22          information showing the steps taken by the agency, including consultation with the  
23          juvenile, to ascertain whether the juvenile has regular, ongoing opportunities to  
24          engage in age or developmentally appropriate activities and to ensure that the  
25          juvenile's caregiver is applying the reasonable and prudent parent standard to

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1 decisions concerning the juvenile's participation in those activities. In addition, at  
2 the review the court or panel shall consult with the juvenile about the permanency  
3 outcome desired by the juvenile.

4 **SECTION 83.** 938.38 (5) (c) 1. of the statutes is amended to read:

5 938.38 (5) (c) 1. The continuing necessity for and the safety and  
6 appropriateness of the placement. If the permanency goal of the juvenile's  
7 permanency plan is placement of the juvenile in a planned permanent living  
8 arrangement described in sub. (4) (fg) 5., the determination under this subdivision  
9 shall include an explanation of why the planned permanent living arrangement is  
10 the best permanency goal for the juvenile and why, supported by compelling reasons,  
11 it continues not to be in the best interests of the juvenile to be returned to his or her  
12 home or to be placed for adoption, with a guardian, or with a fit and willing relative.

13 **SECTION 84.** 938.38 (5) (c) 6. d. of the statutes, as affected by 2015 Wisconsin  
14 Act 55, is amended to read:

15 938.38 (5) (c) 6. d. Being placed in some other planned permanent living  
16 arrangement that includes an appropriate, enduring relationship with an adult,  
17 ~~including sustaining care, or transitioning to independence.~~

18 **SECTION 85.** 938.38 (5) (c) 7m. of the statutes is created to read:

19 938.38 (5) (c) 7m. If the permanency goal of the juvenile's permanency plan is  
20 placement of the juvenile in a planned permanent living arrangement described in  
21 sub. (4) (fg) 5., the steps taken by the agency, including consultation with the  
22 juvenile, to ascertain whether the juvenile has regular, ongoing opportunities to  
23 engage in age or developmentally appropriate activities and to ensure that the  
24 juvenile's caregiver is applying the reasonable and prudent parent standard to  
25 decisions concerning the juvenile's participation in those activities.

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1           **SECTION 86.** 938.38 (5) (c) 9. of the statutes, as affected by 2015 Wisconsin Act  
2           55, is amended to read:

3           938.38 **(5)** (c) 9. If the juvenile is the subject of an order that terminates as  
4           provided in s. 938.355 (4) (am) 4., 938.357 (6) (a) 4., or 938.365 (5) (b) 4. or of a  
5           voluntary transition-to-independent-living agreement under s. 938.366 (3), the  
6           appropriateness of the transition-to-independent-living plan developed under s.  
7           938.385 (1); the extent of compliance with that plan by the juvenile, the juvenile's  
8           guardian, if any, the agency primarily responsible for providing services under that  
9           plan, and any other service providers; and the progress of the juvenile toward  
10          making the transition to ~~independent living~~ a successful adulthood.

11          **SECTION 87.** 938.38 (5m) (c) 3. of the statutes is created to read:

12          938.38 **(5m)** (c) 3. If the permanency goal of the juvenile's permanency plan is  
13          placement of the juvenile in a planned permanent living arrangement described in  
14          sub. (4) (fg) 5., the agency that prepared the permanency plan shall present to the  
15          court specific information showing that intensive and ongoing efforts were made by  
16          the agency, including searching social media, to return the juvenile to the juvenile's  
17          home or to place the juvenile for adoption, with a guardian, or with a fit and willing  
18          relative and that those efforts have proved unsuccessful and specific information  
19          showing the steps taken by the agency, including consultation with the juvenile, to  
20          ascertain whether the juvenile has regular, ongoing opportunities to engage in age  
21          or developmentally appropriate activities and to ensure that the juvenile's caregiver  
22          is applying the reasonable and prudent parent standard to decisions concerning the  
23          juvenile's participation in those activities. In addition, at the hearing the court shall  
24          consult with the juvenile about the permanency outcome desired by the juvenile.

25          **SECTION 88.** 938.383 of the statutes is created to read:

**ASSEMBLY BILL 406****SECTION 88**

1           **938.383 Reasonable and prudent parent standard. (1) USE OF STANDARD**  
2 BY OUT-OF-HOME CARE PROVIDERS. An out-of-home care provider shall use the  
3 reasonable and prudent parent standard in making decisions concerning a juvenile's  
4 participation in age or developmentally appropriate extracurricular, enrichment,  
5 cultural, and social activities. In making decisions using the reasonable and prudent  
6 parent standard, an out-of-home care provider shall consider the restrictiveness of  
7 the juvenile's placement and whether the juvenile has the necessary training and  
8 safety equipment to safely participate in the activity under consideration and may  
9 not make any decision that is in violation of any court order or any state or federal  
10 law, rule, or regulation.

11           **(2) JUVENILE-SPECIFIC CONSIDERATIONS REQUIRED. (a)** At the time of placement  
12 of a juvenile with an out-of-home care provider, the agency that places, or that  
13 arranges the placement of, the juvenile or the agency assigned primary  
14 responsibility for providing services to the juvenile under s. 938.355 (2) (b) 6g.  
15 provide to the out-of-home care provider the information that is required to be  
16 provided to an out-of-home care provider under the rules promulgated under s.  
17 895.485 (4) (a) and information that is specific to the juvenile for the out-of-home  
18 care provider to consider in making reasonable and prudent parenting decisions  
19 concerning the juvenile's participation in age or developmentally appropriate  
20 extracurricular, enrichment, cultural, and social activities. In preparing that  
21 information or any revisions of that information, the agency shall do all of the  
22 following:

23           1. If reasonably possible to do so, consult with the juvenile's parent and other  
24 members of the juvenile's family concerning the juvenile's participation in  
25 extracurricular, enrichment, cultural, and social activities and the juvenile's

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1 cultural, religious, and tribal values and advise the parent that those values will be  
2 considered, but will not necessarily be the determining factor, in making decisions  
3 concerning the juvenile's participation in those activities.

4 2. Consult with the juvenile in an age-appropriate manner about the  
5 opportunities of the juvenile to participate in age or developmentally appropriate  
6 activities.

7 (b) At the time of placement of a juvenile with an out-of-home care provider,  
8 the agency providing the information under par. (a) shall explain to the out-of-home  
9 care provider the parameters of the considerations that the out-of-home care  
10 provider is required to take into account when making decisions concerning the  
11 juvenile's participation in age or developmentally appropriate extracurricular,  
12 enrichment, cultural, and social activities. In explaining those parameters, the  
13 agency shall explain the considerations and prohibitions specified in sub. (1) and  
14 shall advise the out-of-home care provider that in case of any disagreement over the  
15 application of the reasonable and prudent parent standard, the agency having  
16 placement and care responsibility for the juvenile is ultimately responsible for  
17 decisions concerning the care of the juvenile.

18 (c) In preparing or revising the permanency plan for a juvenile, the agency  
19 responsible for preparing or revising the permanency plan shall consult with the  
20 juvenile and the juvenile's parent as provided in par. (a) 1. and 2. At the time the  
21 permanency plan is prepared and each time the permanency plan is revised, that  
22 agency shall explain to the out-of-home care provider the parameters of the  
23 considerations that the out-of-home care provider is required to take into account  
24 when making decisions concerning the juvenile's participation in age or

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1 developmentally appropriate extracurricular, enrichment, cultural, and social  
2 activities as provided in par. (b).

3 **(3) RULES.** The department of children and families shall promulgate rules to  
4 implement this section.

5 **SECTION 89.** 938.385 of the statutes, as affected by 2015 Wisconsin Act 55, is  
6 renumbered 938.385 (intro.) and amended to read:

7 **938.385 Plan for transition to independent living.** (intro.) During the 90  
8 days immediately before a juvenile who is placed in a foster home, group home, or  
9 residential care center for children and youth, in the home of a relative other than  
10 a parent, or in a supervised independent living arrangement attains 18 years of age  
11 or, if the juvenile is placed in such a placement under an order under s. 938.355,  
12 938.357, or 938.365 that terminates under s. 938.355 (4) (am) after the juvenile  
13 attains 18 years of age or under a voluntary transition-to-independent-living  
14 agreement under s. 938.366 (3) that terminates under s. 938.366 (3) (a) after the  
15 juvenile attains 18 years of age, during the 90 days immediately before the  
16 termination of the order or agreement, the agency primarily responsible for  
17 providing services to the juvenile under the order or agreement shall provide do all  
18 of the following:

19 **(1) TRANSITION PLAN.** Provide the juvenile with assistance and support in  
20 developing a plan for making the transition from out-of-home care to independent  
21 living. The transition plan shall be personalized at the direction of the juvenile, shall  
22 be as detailed as the juvenile directs, and shall include specific options for obtaining  
23 housing, health care, education, mentoring and continuing support services, and  
24 workforce support and employment services.

25 **SECTION 90.** 938.385 (2) of the statutes is created to read:

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1           938.385 (2) IDENTIFICATION DOCUMENTS AND OTHER INFORMATION. Except as  
2 provided in this subsection, ensure that the juvenile is in possession of a certified  
3 copy of the juvenile's birth certificate, a social security card issued by the federal  
4 social security administration, information on maintaining health care coverage, a  
5 copy of the juvenile's health care records, and either an operator's license issued  
6 under ch. 343 or an identification card issued under s. 343.50. If the juvenile is not  
7 in possession of any of those documents or that information, the agency shall assist  
8 the juvenile in obtaining any missing document or information. This subsection does  
9 not apply to a juvenile who has been placed in out-of-home care for less than 6  
10 months.

**SECTION 91. Nonstatutory provisions.**

11           (1) REASONABLE AND PRUDENT PARENT STANDARD; EMERGENCY RULES. Using the  
12 procedure under section 227.24 of the statutes, the department of children and  
13 families may promulgate the rules required under sections 48.383 (3), 48.67 (4) (a)  
14 1m. and (5), and 938.383 (3) of the statutes, as created by this act, for the period  
15 before the effective date of the permanent rules promulgated under those sections,  
16 but not to exceed the period authorized under section 227.24 (1) (c) of the statutes,  
17 subject to extension under section 227.24 (2) of the statutes. Notwithstanding  
18 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required  
19 to provide evidence that promulgating a rule under this subsection as an emergency  
20 rule is necessary for the preservation of the public peace, health, safety, or welfare  
21 and is not required to provide a finding of emergency for a rule promulgated under  
22 this subsection.  
23

24           (2) ELIMINATION OF SUSTAINING CARE; TRANSITIONAL PROVISIONS.

**ASSEMBLY BILL 406****SECTION 91**

1           (a) *Temporary continuation in sustaining care.* Notwithstanding the repeal of  
2 section 48.428 of the statutes by this act, all of the following apply:

3           1. A child 16 years of age or over who is in sustaining care under a sustaining  
4 care contract entered into before the effective date of this subdivision may remain  
5 in sustaining care until the termination date of the contract.

6           2. A child under 16 years of age who is in sustaining care under a sustaining  
7 care contract entered into before the effective date of this subdivision may remain  
8 in sustaining care until the next permanency plan review or hearing for the child,  
9 at which time the child’s permanency plan shall be amended to provide for a  
10 permanency goal other than placement in sustaining care.

11           (b) *Continued application of laws.* Notwithstanding the repeal of sections  
12 48.428 and 115.76 (12) (a) 8. of the statutes and the amendment of section 809.107  
13 (2) (bm) (intro.) of the statutes by this act, those provisions shall continue to apply  
14 to a child described in paragraph (a) 1. 2. or until the child is no longer placed in  
15 sustaining care.

16           **SECTION 92. Initial applicability.**

17           (1) PERMANENCY PLAN PREPARATION AND CONTENTS.

18           (a) *Generally.* Except as provided in paragraph (b), the treatment of sections  
19 48.38 (2m) and (4) (f) 3., (fg) 5., (fm), and (h) (intro.), 2., 4., 5., 6., and 7. and 938.38  
20 (2m) and (4) (f) 3., (fg) 5., (fm), and (h) (intro.), 2., 4., 5., 6., and 7. of the statutes first  
21 applies to a permanency plan filed on the effective date of this subsection.

22           (b) *Children under tribal responsibility.* The treatment of sections 48.38 (4) (f)  
23 3., (fg) 5., and (fm) and 938.38 (4) (f) 3., (fg) 5., and (fm) of the statutes first applies  
24 to a permanency plan for a child who is in out-of-home care under the responsibility



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1 of an Indian tribe, tribal organization, or tribal consortium filed on September 29,  
2 2017.

3 (2) PERMANENCY PLAN REVIEWS AND HEARINGS.

4 (a) *Generally.* Except as provided in paragraph (b), the treatment of sections  
5 48.38 (5) (bm) 3. and (c) 1., 7m., and 9. and (5m) (c) 3., 48.43 (5) (b) 2m., and 938.38  
6 (5) (bm) 3. and (c) 1., 7m., and 9. and (5m) (c) 3. of the statutes first applies to a  
7 permanency plan review or hearing for which notice is provided on the effective date  
8 of this subsection.

9 (b) *Children under tribal responsibility.* The treatment of sections 48.38 (5)  
10 (bm) 3. and (c) 1. and 7m. and (5m) (c) 3., 48.43 (5) (b) 2m., and 938.38 (5) (bm) 3. and  
11 (c) 1. and 7m. and (5m) (c) 3. of the statutes first applies to a review or hearing for  
12 a permanency plan for a child who is in out-of-home care under the responsibility  
13 of an Indian tribe, tribal organization, or tribal consortium for which notice is  
14 provided on September 29, 2017.

15 (3) TRANSITION TO INDEPENDENT LIVING. The renumbering and amendment of  
16 sections 48.385 and 938.385 of the statutes and the creation of sections 48.385 (2) and  
17 938.385 (2) of the statutes first apply to a child who attains 18 years of age or whose  
18 order under section 48.355 (4) (b) or 938.355 (4) (am) of the statutes terminates,  
19 whichever is later, 90 days after the effective date of this subsection.

20 (4) PARTICIPATION OF CHILD IN AGE OR DEVELOPMENTALLY APPROPRIATE ACTIVITIES.  
21 The treatment of sections 48.02 (1dm), (12r), and (14r), 48.383, 48.627 (2s) (am),  
22 167.10 (7), 895.485 (title), (1) (a), (ag), (c), and (d), (2), (3), (4) (intro.) and (a), (5), and  
23 (6), 938.02 (1g), (12r), and (14r), and 938.383 of the statutes first applies to  
24 permission for a child to engage in an age or developmentally appropriate activity  
25 granted on the effective date of this subsection.

