

JLK:tlu

03/15/2005

AN ACT *to amend* 6.28 (2) (c), 7.30 (2) (am), 15.377 (4) (f), 15.377 (8) (c) 5m., 15.57 (3), 16.971 (15), 16.972 (2) (b), 16.9785, 16.99 (2g), 20.255 (2) (cn), 20.505 (1) (is), 27.01 (7) (c) 10., 29.301 (1) (a), 36.11 (36m), 38.001 (3) (a), 38.04 (27), 38.14 (3) (a) and (bm), 39.41 (1) (bm) and (1m) (a), (b), (c) 4., 5., (e), (em), (g), and (j), 45.396 (2), 46.275 (3r) (a) 3., 48.345 (12), 48.355 (2) (c), 48.396 (1), 48.65 (2) (b), 48.78 (2) (b), 49.26 (1) (g) 2., 103.23 (2) (intro.), (a), (3m) (c) and (5), 103.25 (3m) (c) and (5), 103.27 (3), 103.275 (8), 103.67 (2) (c), 103.71 (1) (b), 115.28 (7) (b) and (e) 1. and (11), 115.34 (2), 115.341 (1) and (2), 115.345 (7m), 115.36 (1), (2) (a), (b) and (d) 3., 115.365 (1), (2) (a) and (b), 115.368 (1), (2) (a) and (b), 115.42 (1) (a) 2. and (2) (a) 2., 115.52 (3) (b) 1., 2. and 10., 115.525 (3) (b) 2., 115.77 (1m) (d), 115.77 (1m) (e), 115.77 (4) (m), 115.791, 115.792 (3) (b) 8., 116.01, 116.032 (1) and (3) (a), 118.08 (1), 118.125 (2) (n), 118.125 (4), 118.127, 118.145 (3) and (4), 118.15 (1) (a) and (4), 118.15 (1) (d) 4., 118.153 (1) (b), 118.16, 118.255 (2) (a), (b) and (c), 118.40 (2m) (am), 120.18 (1) (a) 2. and (s), 121.05 (1) (a) 7., 121.76 (1) (a), 121.78 (4), 125.09 (2) (a) 2., 125.68 (3), 231.01 (4m), 252.15 (1) (ab) and (2) (a) 7. a., 301.45 (1d) (c), 301.46 (4) (a) 1., 343.06 (1) (c), 343.07 (5), 343.16 (1) (c) 3., 447.06 (2) (a) 2., 938.34 (7d), 938.34 (14t), 938.342 (1r), 938.355 (2) (c), 938.396, 938.78 (2) (b), 939.632 (1) (a) and (d) 3., 944.21 (8) (b) 2., 948.095 (1) (a), 948.11 (4) (b) 2., 948.50 (2) (a), 948.61 (1) (b), 961.49 (2) (f) and 961.495; and **to create** 16.972 (1) (cm), 39.41 (1) (c), 49.26 (1) (a) 2. bm., 103.21 (7), 103.64 (6), 115.001 (16), 118.162 (1) (am) and (m) and 118.30 (7) of the statutes; **relating to:** providing

- 1 benefits to tribal schools and tribal school pupils similar to those provided to private
2 schools and private school pupils.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: At the October 19, 2004, meeting of the joint legislative council's special committee on state-tribal relations, the committee heard presentations by John Wilhelmi, Program Attorney, Menominee Indian Tribe of Wisconsin, and Dr. Donna Powless, Administrator, Menominee Tribal School, recommending that Wisconsin statutes be changed to: (1) provide the same benefits to tribal schools and tribal school pupils as the benefits provided to private schools and private school pupils; and (2) provide state funding to tribal schools.

Committee Chair Representative Terry Musser directed that specific proposals be developed for committee consideration. The ad hoc working group on tribal schools was convened to develop these proposals. This preliminary bill draft (the first in a series of 5) was prepared for the purpose of discussion by the working group at its meeting on March 18, 2005.

GENERAL BACKGROUND

Current Law

Private Schools

Under current law, a "private school" is defined in s. 115.001 (3r), stats., for the purposes of the K-12 education statutes (chs. 115 to 121, stats.) as an institution with a private educational program that: (1) meets all of the criteria under s. 118.165 (1), stats.; or (2) is determined to be a private school by the state superintendent of public instruction (state superintendent) under s. 118.167, stats., because evidence is presented that it meets or exceeds the criteria in s. 118.165 (1), stats. Those criteria are that the educational program: (1) has as its primary purpose providing private or religious-based education; (2) is privately controlled; (3) provides at least 875 hours of instruction in each school year; (4) has a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science, and health; (5) is not operated to avoid or circumvent the compulsory attendance laws; and (6) has its pupils return annually to their homes for at least 2 months of summer vacation or the institution is licensed as a child welfare agency. Current law imposes certain

requirements on private schools and provides certain benefits to private schools and private school pupils.

Tribally-Operated Schools

Under current Wisconsin statutes, tribally-operated schools are dealt with only in the subch. IV, ch. 115, stats., relating to the American Indian language and culture education program. In that subchapter, an “alternative school” is defined as “any nonsectarian *private school* or *tribally operated school* in this state which complies with the requirements of 42 USC 2000d [relating to prohibiting exclusion from participation, denial of benefits, or discrimination based on race, color, or national origin] and in which at least 75% of the pupils enrolled are American Indians”. [s. 115.71 (1), stats. (emphasis added).]

Subchapter IV, ch. 115, then provides that any school district enrolling American Indian pupils *or* any “alternative school” may, after developing a plan containing certain elements and appointing a parent advisory committee, establish, on a voluntary basis, an American Indian language and culture education program which may contain certain elements. These schools are required to keep certain records, and the state superintendent is required to periodically assess the needs of the program and evaluate available resources and programs. However, the programs of alternative schools can be evaluated only with the permission of the alternative school [s. 115.74 (1) (b), stats.]; and the assessment and evaluation can be “performed on Indian reservations and in other Indian communities recognized by the federal government only in conjunction with, or with the permission of, the respective tribal governments”. [s. 115.74 (3), stats.]

A tribally-operated school does not need authorization from the state to create an American Indian language and culture education program. Subchapter IV, ch. 15, including its requirements to keep records, was enacted in connection with providing state categorical aid to a school district or alternative school that provided a program that met the criteria in subch. IV, ch. 115. State aid for such programs was eliminated by 2003 Wisconsin Act 33.

Tribally-Operated Schools in Wisconsin

Currently 4 schools in Wisconsin come under the tribally-operated schools component of the “alternative school” definition in s. 115.71 (1), stats. They are the: Menominee Tribal School; Oneida Nation of Wisconsin Schools; Lac Courte Oreilles Tribal School; and Mashkiziibii (Bad River) Tribal School. The first 3 have contracts with and are funded, in full or in part, by the bureau of Indian affairs (BIA). The last

is funded by the Bad River Tribal Council and does not have a contract with or receive a grant from the BIA.

Currently it appears that one school in Wisconsin meets the “nonsectarian private school . . . in which at least 75% of the pupils enrolled are American Indians” component of the “alternative school” definition in s. 115.71 (1), stats. It is the Indian Community School of Milwaukee, Inc. It appears that the state statutes dealing with private schools already apply to this school, and the drafts in this series do not affect it.

Authority of the State with Regard to Tribally–Operated Schools

In general, state civil regulatory laws do not apply to a tribe or a member of that tribe on the tribe’s reservation or off–reservation trust land unless an act of Congress, a treaty, or case law (that is, decisions by the courts) provides that the state law is applicable. Most K–12 education laws likely would be considered to be civil regulatory laws. It appears that neither an act of Congress nor any treaty has authorized the state to apply its civil regulatory education laws to a tribal school that is located on a tribe’s reservation or off–reservation trust land. As for whether case law does so, court decisions suggest that, if a matter were litigated, a court would apply a balancing of interests test and hold that a state civil regulatory education law applies to a tribal school only if the state interests outweigh the tribal and federal interests. That analysis depends on the facts surrounding each individual statute; thus, there is no universal answer as to whether a state civil regulatory law applies to a tribal school.

However, in general, it appears that with respect to most state K–12 education laws, the state does not have authority to impose such laws on tribal schools. Moreover, a tribe may choose to assert sovereign immunity if a legal action were filed against the tribal school or tribal school officials to enforce any such law.

Nonetheless, a state may choose to provide funding or other benefits to a tribal school or tribal school pupil and may condition such funding or benefits on meeting certain prerequisites to be eligible for the funding or benefits.

PRELIMINARY BILL DRAFTS AND MEMORANDUM

There are 5 preliminary bill drafts and a memorandum prepared for discussion by the working group.

For the first topic suggested by the Menominee Tribe (that is, to provide the same benefits to tribal schools and tribal school pupils as the benefits provided to private schools and private school pupils), the statutes were

reviewed to identify those that refer to private schools and those that refer generically to schools but are interpreted as applying to private schools.

One of the tasks of the working group is to review statutes relating to private schools to determine if similar treatment should be accorded to tribal schools. Five preliminary bill drafts were developed on this first topic as follows:

A. WLC: 0158/1, (this draft). This draft proposes amendments to statutes that refer specifically to private schools, private school employees, or private school pupils and provide a benefit to them. (This draft does not include transportation issues which are dealt with in a separate draft (WLC: 0162/1).) The amendments add references to tribal schools, tribal school employees, or tribal school pupils. In some cases, the draft imposes requirements on tribal schools or tribal school staff if the requirement is integrally linked to a benefit provided—for example, by allowing a tribal school to receive certain confidential records but prohibiting redisclosure of the record.

The draft defines a “tribal school” in s. 115.001 (16), stats., as an institution with an educational program that has as its primary purpose providing education in any grade or grades from kindergarten to 12 and that is controlled by the elected governing body of a federally recognized American Indian tribe or band in Wisconsin or by a tribal educational authority established under the laws of a federally recognized American Indian tribe or band in Wisconsin. That definition then applies in chs. 115 to 121 (statutes relating to K–12 education) under s. 115.001 (intro.), stats. The draft then uses the same definition by cross-reference in statutes outside chs. 115 to 121, stats. The provisions of the draft are explained in NOTES following the SECTIONS.

B. WLC: 0159/1. This draft sets forth the current text of statutes that explicitly impose requirements on private schools. The draft does *not* yet amend these statutes to apply to tribal schools. Possible amendments will be discussed at the March 18 meeting of the working group.

C. WLC: 0160/1. This draft sets forth the current text of statutes explicitly relating to private schools that are not included in the other drafts because additional issues should be considered in determining if they should be amended to apply to tribal schools. The draft does *not* yet amend these statutes to apply to tribal schools. Possible amendments will be discussed at the March 18 meeting of the working group.

D. WLC: 0161/1. This draft sets forth the current text of statutes that refer generically to schools without explicitly referring to public schools, private schools, or tribal schools. The draft does *not* yet amend these

statutes to apply to tribal schools. Possible amendments will be discussed at the March 18 meeting of the working group.

E. WLC: 0162/1. This draft relates to transportation of pupils.

For the second topic suggested by the Menominee Tribe (that is, state funding to tribal schools), a memorandum is addressed to the working group discussing issues relating to this topic.

All of the preliminary bill drafts are intended to facilitate discussion by the working group to develop a proposal for consideration by the committee. They are not intended to be the final version presented to the committee. Recommendations may be made to delete or modify some of a draft's provisions or include other provisions.

1 **SECTION 1.** 6.28 (2) (c) of the statutes is amended to read:

2 6.28 (2) (c) The principal of any private high school having or of any tribal school as
3 defined in s. 115.001 (16) that operates high school grades having a substantial number of
4 students residing in a municipality may request the municipal clerk to establish registration
5 dates when a special registration deputy will be present in the high school, or to appoint a
6 special school registration deputy in accordance with par. (b). The clerk shall establish
7 registration dates or appoint a special school registration deputy in the high school if the clerk
8 determines the school to have a substantial number of students residing in the municipality.

NOTE: Permits a tribal school with high school grades having a substantial number of students to ask the municipal clerk to conduct voter registration at the high school.

9 **SECTION 2.** 7.30 (2) (am) of the statutes is amended to read:

10 7.30 (2) (am) Except as otherwise provided in this paragraph, a pupil who is 16 or 17
11 years of age, who is enrolled in grades 9 to 12 in a public or private school or in a tribal school
12 as defined in s. 115.001 (16), and who has at least a 3.0 grade point average or the equivalent
13 may serve as an inspector at the polling place serving the pupil's residence, with the approval
14 of the pupil's parent or guardian and of the principal of the school in which the pupil is
15 enrolled. A pupil may serve as an inspector at a polling place under this paragraph only if at

1 least one election official at the polling place other than the chief inspector is a qualified elector
2 of this state. No pupil may serve as chief inspector at a polling place under this paragraph.
3 Before appointment by any municipality of a pupil as an inspector under this paragraph, the
4 municipal clerk shall obtain written authorization from the pupil's parent or guardian and from
5 the principal of the school where the pupil is enrolled for the pupil to serve for the entire term
6 for which he or she is appointed. Upon appointment of a pupil to serve as an inspector, the
7 municipal clerk shall notify the principal of the school where the pupil is enrolled of the date
8 of expiration of the pupil's term of office.

NOTE: Permits certain tribal school pupils to serve as an inspector at a polling place under certain conditions.

9 **SECTION 3.** 15.377 (4) (f) of the statutes is amended to read:

10 15.377 (4) (f) Representatives of private schools ~~and~~ charter schools, and tribal schools
11 as defined in s. 115.001 (16).

NOTE: Provides that representatives of tribal schools may serve on the department of public instruction (DPI) council on special education.

12 **SECTION 4.** 15.377 (8) (c) 5m. of the statutes is amended to read:

13 15.377 (8) (c) 5m. One person licensed as a teacher and actively employed in a private
14 school, recommended by the Wisconsin Association of Nonpublic Schools.

COMMENT: This provision sets forth, but does not amend, the provision that permits one licensed teacher, recommended by the Wisconsin association of nonpublic schools, to serve on the DPI professional standards council for teachers. The council has 19 members who, with one limited exception, are appointed for 3-year terms. With 3 exceptions, a vacancy in any category is filled by having the entity that is authorized to make a recommendation in that category provide 3 names to the state superintendent, who then makes the selection for that category.

Should this statute be amended to increase the number to 20 members by adding a provision for a licensed teacher employed by a tribal school? Or should it be amended to retain the membership at 19 and have the

tribal schools and private schools share a position, for example, on a rotating basis. If tribal schools are included, who should have the authority to recommend 3 names?

1 **SECTION 5.** 15.57 (3) of the statutes is amended to read:

2 15.57 (3) One representative of public schools and one representative of private schools
3 or of tribal schools as defined in s. 115.001 (16), appointed for 4-year terms.

NOTE: The educational communications board has 16 members who, with limited exceptions not applicable to this provision, are nominated by the Governor and confirmed by the Senate. This provision permits the Governor to nominate a representative who may represent either a tribal school or private school.

COMMENT: Is this appropriate, or should the approach taken with respect to the professional standards council for teachers in SECTION 4 be used?

4 **SECTION 6.** 16.971 (15) of the statutes is amended to read:

5 16.971 (15) Provide private schools and tribal schools as defined in s. 115.001 (16) with
6 telecommunications access under s. 16.997 and contract with telecommunications providers
7 to provide that access.

NOTE: Requires the department of administration (DOA) to include tribal schools in the educational telecommunication access program under s. 16.997, stats., which provides access to data lines and video links under certain conditions to certain educational agencies (including private schools) at certain costs. This program is the part of the technology for educational achievement (TEACH) program that applies to private schools.

8 **SECTION 7.** 16.972 (1) (cm) of the statutes is created to read:

9 16.972 (1) (cm) “Qualified tribal school” means a tribal school as defined in s. 115.001
10 (16).

11 **SECTION 8.** 16.972 (2) (b) of the statutes is amended to read:

12 16.972 (2) (b) Provide such computer services and telecommunications services to
13 local governmental units and the broadcasting corporation and provide such

1 telecommunications services to qualified private schools, tribal schools, postsecondary
2 institutions, museums, and zoos, as the department considers to be appropriate and as the
3 department can efficiently and economically provide. The department may exercise this
4 power only if in doing so it maintains the services it provides at least at the same levels that
5 it provides prior to exercising this power and it does not increase the rates chargeable to users
6 served prior to exercise of this power as a result of exercising this power. The department may
7 charge local governmental units, the broadcasting corporation, and qualified private schools,
8 tribal schools, postsecondary institutions, museums, and zoos, for services provided to them
9 under this paragraph in accordance with a methodology determined by the department. Use
10 of telecommunications services by a qualified private school, tribal school, or postsecondary
11 institution shall be subject to the same terms and conditions that apply to a municipality using
12 the same services. The department shall prescribe eligibility requirements for qualified
13 museums and zoos to receive telecommunications services under this paragraph.

14 **SECTION 9.** 16.974 (2) and (3) of the statutes are amended to read:

15 16.974 (2) Subject to s. 16.972 (2) (b), enter into and enforce an agreement with any
16 agency, any authority, any unit of the federal government, any local governmental unit, ~~or~~ any
17 entity in the private sector, or any tribal school as defined in s. 115.001 (16) to provide services
18 authorized to be provided by the department to that agency, authority, unit, ~~or~~ entity, or tribal
19 school at a cost specified in the agreement.

20 (3) Develop or operate and maintain any system or device facilitating Internet or
21 telephone access to information about programs of agencies, authorities, local governmental
22 units, ~~or~~ entities in the private sector, or any tribal schools or otherwise permitting the
23 transaction of business by agencies, authorities, local governmental units, ~~or~~ entities in the
24 private sector, or tribal schools by means of electronic communication. The department may

1 assess executive branch agencies, other than the board of regents of the University of
2 Wisconsin System, for the costs of systems or devices relating to information technology or
3 telecommunications that are developed, operated, or maintained under this subsection in
4 accordance with a methodology determined by the department. The department may also
5 charge any agency, authority, local governmental unit, ~~or~~ entity in the private sector, or tribal
6 school for such costs as a component of any services provided by the department to that
7 agency, authority, local governmental unit, ~~or~~ entity, or tribal school.

NOTE: SECTIONS 7, 8, and 9 permit DOA to provide telecommunications services to tribal schools that DOA considers appropriate and charge for such services. Also see s. 20.505 (1) (is), below.

8 **SECTION 10.** 16.9785 of the statutes is amended to read:

9 **16.9785 Purchases of computers by teachers.** The department shall negotiate with
10 private vendors to facilitate the purchase of computers and other educational technology, as
11 defined in s. 24.60 (1r), by public ~~and~~ private, and tribal elementary and secondary school
12 teachers for their private use. The department shall attempt to make available types of
13 computers and other educational technology under this section that will encourage and assist
14 teachers in becoming knowledgeable about the technology and its uses and potential uses in
15 education.

NOTE: Includes tribal school teachers in the DOA program to facilitate the purchase of computers by school teachers.

16 **SECTION 11.** 16.99 (2g) of the statutes is amended to read:

17 16.99 (2g) “Educational agency” means a school district, charter school sponsor,
18 secured correctional facility, private school, tribal school as defined in s. 115.001 (16),
19 cooperative educational service agency, technical college district, private college, public
20 library system, public library board, public museum, the Wisconsin Center for the Blind and

1 Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of
2 Hearing.

NOTE: Includes tribal schools under the educational telecommunications access program which is part of the TEACH program. (See SECTION 6.)

COMMENT: Sections 16.997 (6) and 196.218 (5) (a) 7., stats., which provide grants under the TEACH program for certain private schools, were not amended because that grant program terminates December 31, 2005.

3 **SECTION 12.** 20.255 (2) (cn) of the statutes is amended to read:

4 20.255 (2) (cn) *Aids for school lunches and nutritional improvement.* The amounts in
5 the schedule for the payment of school lunch aids to school districts ~~and to~~ private schools,
6 and tribal schools under s. 115.34 (2) and for nutritional improvement under ss. 36.51, 38.36,
7 and 115.345.

NOTE: Provides that tribal schools are eligible for school lunch aids.

COMMENT: As noted in the COMMENT to the amendment to s. 115.34, below, DPI currently includes tribal schools in this program.

8 **SECTION 13.** 20.505 (1) (is) of the statutes is amended to read:

9 20.505 (1) (is) *Information technology and communications services; nonstate entities.*
10 From the sources specified in ss. 16.972 (2) (b) and (c), 16.974 (2) and (3), and 16.997 (2) (d),
11 to provide computer, telecommunications, electronic communications, and supercomputer
12 services to state authorities, units of the federal government, local governmental units, tribal
13 schools, and entities in the private sector, the amounts in the schedule.

NOTE: Amends the appropriation to DOA for technology and communications services provided to tribal schools to reflect the amendment to ss. 16.972 (2) (b) and 16.974 (2) and (3), above.

14 **SECTION 14.** 27.01 (7) (c) 10. of the statutes is amended to read:

15 27.01 (7) (c) 10. Any motor vehicle operated for the purpose of transporting pupils to
16 or from curricular or extracurricular activities of a public or private school ~~or~~ a home-based

1 private educational program under s. 118.15 (4), or a tribal school as defined in s. 115.001 (16).
2 The operator of a motor vehicle transporting pupils under this subdivision shall possess and
3 exhibit for inspection a written authorization from an administrator of the school or
4 home-based private educational program indicating that admission to the vehicle admission
5 area is part of an official school or home-based private educational program function and
6 indicating the date for which the authorization is applicable. A separate authorization is
7 required for each date on which the motor vehicle is admitted to the vehicle admission area
8 under this subdivision.

NOTE: Exempts a motor vehicle transporting tribal school pupils to a state park or recreational area from the requirement to display a state park admission receipt.

9 **SECTION 15.** 29.301 (1) (a) of the statutes is amended to read:

10 29.301 (1) (a) In this subsection, “school” means a public or private elementary or
11 secondary school, including a charter school, a tribal school as defined in s. 115.001 (16), or
12 a technical college.

NOTE: Adds tribal school to the definition of “school” that is used in s. 29.301 (1) (b), stats., which prohibits hunting within 1,700 feet of certain facilities, including a school.

13 **SECTION 16.** 36.11 (36m) of the statutes is amended to read:

14 36.11 (36m) SCHOOL SAFETY RESEARCH. The board shall direct the schools of education
15 and other appropriate research-oriented departments within the system, to work with the
16 technical college system board under s. 38.04 (27), school districts, private schools, tribal
17 schools as defined in s. 115.001 (16), and the department of public instruction to present to
18 school districts ~~and~~, private schools, and tribal schools the results of research on models for
19 and approaches to improving school safety and reducing discipline problems in schools and
20 at school activities.

NOTE: Requires the board of regents of the University of Wisconsin (UW) System to direct the UW schools of education to additionally work with tribal schools on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research.

1 **SECTION 17.** 38.001 (3) (a) of the statutes is amended to read:

2 38.001 (3) (a) 1. Contract with secondary schools, including tribal schools as defined
3 in s. 115.001 (16), to provide educational opportunities for high school age students in order
4 to enhance their potential for benefiting from postsecondary education and for obtaining
5 employment.

6 2. Coordinate and cooperate with secondary schools, including tribal schools as defined
7 in s. 115.001 (16), to facilitate the transition of secondary school students into postsecondary
8 technical college education through curriculum articulation and collaboration.

NOTE: Provides that the purposes of the technical college system include contracting, coordinating, and cooperating with tribal schools.

9 **SECTION 18.** 38.04 (27) of the statutes is amended to read:

10 38.04 (27) SCHOOL SAFETY. The board shall work with schools of education and other
11 departments of the University of Wisconsin System under s. 36.11 (36m), school districts,
12 private schools, tribal schools as defined in s. 115.001 (16), and the department of public
13 instruction to present to school districts ~~and, private schools,~~ and tribal schools the results of
14 research on models for and approaches to improving school safety and reducing discipline
15 problems in schools and at school activities.

NOTE: Requires the technical college system board to additionally work with tribal schools on researching improving school safety and reducing school discipline problems and to share with tribal schools the results of such research.

16 **SECTION 19.** 38.14 (3) (a) and (bm) of the statutes are amended to read:

1 38.14 (3) (a) The district board may enter into contracts to provide educational services
2 to public and private educational institutions, tribal schools as defined in s. 115.001 (16),
3 federal and state agencies, local governmental bodies, industries, and businesses.

4 (bm) The district board may enter into contracts to provide fiscal and management
5 services to public and private educational institutions, tribal schools as defined in s. 115.001
6 (16), federal and state agencies, and local governmental units.

NOTE: Authorizes a technical college system district board to
 additionally contract with tribal schools to provide educational services
 or fiscal and management services.

7 **SECTION 20.** 39.41 (1) (bm) and (1m) (a), (b), (c) 4., 5., (e), (em), (g), and (j) of the
8 statutes are amended to read:

9 39.41 (1) (bm) “Senior” means a pupil enrolled in the 12th grade in a public or private
10 high school, a tribal school, the school operated by the Wisconsin Educational Services
11 Program for the Deaf and Hard of Hearing, or the school operated by the Wisconsin Center
12 for the Blind and Visually Impaired.

13 **(1m)** (a) Subject to par. (d), by February 15 of each school year, the school board of each
14 school district operating one or more high schools and the governing body of each private high
15 school and of each tribal high school shall:

16 1. For each high school with an enrollment of at least 80 pupils but less than 500 pupils,
17 designate the senior with the highest grade point average in all subjects as a scholar.

18 2. For each high school with an enrollment of at least 500 pupils but less than 1,000
19 pupils, designate the 2 seniors with the 2 highest grade point averages in all subjects as
20 scholars.

1 3. For each high school with an enrollment of at least 1,000 pupils but less than 1,500
2 pupils, designate the 3 seniors with the 3 highest grade point averages in all subjects as
3 scholars.

4 4. For each high school with an enrollment of at least 1,500 pupils but less than 2,000
5 pupils, designate the 4 seniors with the 4 highest grade point averages in all subjects as
6 scholars.

7 5. For each high school with an enrollment of 2,000 or more pupils, designate the 5
8 seniors with the 5 highest grade point averages in all subjects as scholars.

9 6. For each high school with an enrollment of 2,500 or more pupils, designate the 6
10 seniors with the 6 highest grade point averages in all subjects as scholars.

11 (b) By February 15 of each school year, the school board of each school district
12 operating one or more high schools and the governing body of each private high school and
13 of each tribal high school may, for each high school with an enrollment of less than 80 pupils,
14 nominate the senior with the highest grade point average in all subjects who may be designated
15 as a scholar by the executive secretary under par. (c) 3.

16 (c) 4. For each public ~~or~~, private, or tribal high school with an enrollment of at least 80
17 pupils, notify the school board of the school district operating the public high school or the
18 governing body of the private or tribal high school of the number of scholars to be designated
19 under par. (a).

20 5. For each public ~~or~~, private, or tribal high school with an enrollment of less than 80
21 pupils, notify the school board of the school district operating the public high school or the
22 governing body of the private or tribal high school that the school board or governing body
23 may nominate a senior under par. (b) who may be designated as a scholar by the executive
24 secretary.

1 (e) Except as provided under par. (em), if 2 or more seniors from the same high school
2 of less than 80 pupils have the same grade point average and, except for the limitation of one
3 nominated senior, are otherwise eligible for nomination under par. (b), the faculty of the high
4 school shall select the senior who may be nominated by the school board of the school district
5 operating the public high school or the governing body of the private or tribal high school for
6 designation under par. (b) as a scholar by the executive secretary. If that senior is designated
7 as a scholar by the executive secretary and does not qualify for a higher education scholarship
8 under sub. (2) (a) or (3) (a), faculty of the high school shall select one or more of the remaining
9 seniors with the same grade point average for certification as a scholar and the school board
10 of the school district operating the high school or the governing body of the private or tribal
11 high school shall certify to the board one or more of these seniors as eligible for a higher
12 education scholarship as a scholar under sub. (2) (a) or (3) (a) until the scholarship may be
13 awarded by the board.

14 (em) If the high school weights different courses differently to determine a pupil's grade
15 point average, and the senior designated as a scholar by the executive secretary under par. (e)
16 does not qualify for a higher education scholarship under sub. (2) (a) or (3) (a), the faculty of
17 the high school shall select one senior with the same grade point average for certification as
18 a scholar, or, if there is no senior with the same grade point average, one senior with the next
19 highest grade point average for certification as a scholar, and the school board of the school
20 district operating the high school or the governing body of the private or tribal high school
21 shall certify to the board the selected senior as eligible for a higher education scholarship as
22 a scholar under sub. (2) (a) or (3) (a) until the scholarship may be awarded by the board.

23 (g) Notwithstanding par. (a), if a high school of at least 80 pupils closes or merges in
24 the 1991–92 school year or in any school year thereafter, the school board of the school district

1 operating the high school or the governing body of the private or tribal high school shall,
2 subject to par. (d), for each of the 2 school years following the closure or merger, designate
3 the same number of scholars from among the pupils enrolled in the high school at the time of
4 closure or merger as the number of scholars designated for that high school in the school year
5 the high school closed or merged. Any seniors designated under this paragraph shall be
6 eligible for an original scholarship under this section.

7 (j) In the event that 2 or more seniors from the same high school of at least 80 pupils
8 have the same grade point average and are otherwise eligible for designation under par. (a),
9 the school board of the school district operating the high school or the governing body of the
10 private or tribal high school shall make the designation of the faculty of the high school for
11 purposes of par. (d) or (i).

12 **SECTION 21.** 39.41 (1) (c) of the statutes is created to read:

13 39.41 (1) (c) "Tribal school" has the meaning given in s. 115.001 (16).

NOTE: SECTIONS 20 and 21 include seniors at a tribal high school in the
academic excellence higher education scholarships program that
provides certain seniors with academic scholarships at the UW, technical
college, or participating private institutions of higher education.

14 **SECTION 22.** 45.396 (2) of the statutes is amended to read:

15 45.396 (2) Any veteran upon the completion of any correspondence course or part-time
16 classroom study from an institution of higher education located in this state, from a school that
17 is approved under s. 45.35 (9m), from a proprietary school that is approved under s. 45.54, ~~or~~
18 from any public or private high school, or from any tribal school as defined in s. 115.001 (16)
19 that operates high school grades may be reimbursed in part for the cost of the course by the
20 department upon presentation to the department of a certificate from the school indicating that
21 the veteran has completed the course and stating the cost of the course and upon application

1 for reimbursement completed by the veteran and received by the department no later than 60
2 days after the termination of the course for which the application for reimbursement is made.
3 The department shall accept and process an application received more than 60 days after the
4 termination of the course if the applicant shows good cause for the delayed receipt. The
5 department may not require that an application be received sooner than 60 days after a course
6 is completed. Benefits granted under this section shall be paid out of the appropriation under
7 s. 20.485 (2) (th).

NOTE: Provides that a veteran is eligible for reimbursement for a course taken at a tribal high school under certain circumstances.

8 **SECTION 23.** 46.275 (3r) (a) 3. of the statutes is amended to read:

9 46.275 (**3r**) (a) 3. The person will be relocated into the home of the person's parent or
10 guardian and will be receiving state monitoring of the relocation and services provided by a
11 public or private school or a tribal school as defined in s. 115.001 (16).

NOTE: Section 46.275 (3r) (a), stats., permits the department of health and family services (DHFS) to relocate a resident of a state center for the developmentally disabled to the community without county participation under circumstances, including the circumstance in s. 46.275 (3r) (a) 3., which is amended to include a tribal school.

12 **SECTION 24.** 48.345 (12) of the statutes is amended to read:

13 48.345 (**12**) EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may
14 order the child to attend any of the following:

15 1. A nonresidential educational program, including a program for children at risk under
16 s. 118.153, provided by the school district in which the child resides.

17 2. Pursuant to a contractual agreement with the school district in which the child resides,
18 a nonresidential educational program provided by a licensed child welfare agency.

1 3. Pursuant to a contractual agreement with the school district in which the child resides,
2 an educational program provided by a private, nonprofit, nonsectarian agency that is located
3 in the school district in which the child resides and that complies with 42 USC 2000d.

4 4. Pursuant to a contractual agreement with the school district in which the child resides,
5 an educational program provided by a technical college district located in the school district
6 in which the child resides.

7 5. Pursuant to a contractual agreement with the school district in which the child resides,
8 an educational program provided by a tribal school as defined in s. 115.001 (16).

9 (b) The judge shall order the school board to disclose the child's pupil records, as
10 defined under s. 118.125 (1) (d), to the county department, department, in a county having a
11 population of 500,000 or more, or licensed child welfare agency responsible for supervising
12 the child, as necessary to determine the child's compliance with the order under par. (a).

13 (c) The judge shall order the county department, department, in a county having a
14 population of 500,000 or more, or licensed child welfare agency responsible for supervising
15 the child to disclose to the school board, technical college district board, tribal school, or
16 private, nonprofit, nonsectarian agency which is providing an educational program under par.

17 (a) 3. records or information about the child, as necessary to assure the provision of
18 appropriate educational services under par. (a).

19 (d) This subsection does not apply to a child with a disability, as defined under s. 115.76
20 (5).

NOTE: Under current law, a child in need of protection or services (CHIPS) dispositional order may include an order that a child attend an educational program provided by the school district or one of several programs under contract with the school district. Current law does not include a tribal school.

This provision specifies that the court is permitted to order a child to attend a tribal school if the school district has a contract with the tribal school for such placements. This provision also requires the court to order the supervising agency to disclose information to the tribal school necessary to assure appropriate educational services. Also see ss. 121.78 (4) and 938.34 (7d), below.

1 **SECTION 25.** 48.355 (2) (c) of the statutes is amended to read:

2 48.355 (2) (c) If school attendance is a condition of an order under par. (b) 7., the order
3 shall specify what constitutes a violation of the condition and shall direct the school board of
4 the school district, or the governing body of the private school, in which the child is enrolled
5 to notify the county department that is responsible for supervising the child or, in a county
6 having a population of 500,000 or more, the department within 5 days after any violation of
7 the condition by the child.

COMMENT: This paragraph is not amended but is included for informational purposes. Under s. 48.355 (2) (b) 7., stats., a CHIPS dispositional order may state the conditions with which the child must comply. If school attendance is a condition, s. 48.355 (2) (c) requires that the order direct the school board or the governing body of a private school to notify the court within 5 days of a violation of the condition.

Does the working group wish to permit a court to order a tribal school to do the same? If so, it is not clear that such an order could be enforced if the tribal school does not comply. An alternative may be to permit a court to request that a tribal school do so. What course, if any, does the working group wish to take? Also see ss. 938.342 (1r) and 938.355 (2) (c), below.

8 **SECTION 26.** 48.396 (1) of the statutes is amended to read:

9 48.396 (1) Law enforcement officers' records of children shall be kept separate from
10 records of adults. Law enforcement officers' records of the adult expectant mothers of unborn
11 children shall be kept separate from records of other adults. Law enforcement officers'
12 records of children and the adult expectant mothers of unborn children shall not be open to
13 inspection or their contents disclosed except under sub. (1b), (1d), or (5) or s. 48.293 or by

1 order of the court. This subsection does not apply to the representatives of newspapers or other
2 reporters of news who wish to obtain information for the purpose of reporting news without
3 revealing the identity of the child or adult expectant mother involved, to the confidential
4 exchange of information between the police and officials of the school attended by the child
5 or other law enforcement or social welfare agencies or to children 10 years of age or older who
6 are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who
7 obtains information under this subsection shall keep the information confidential as required
8 under s. 118.125, and a private school official or an official of a tribal school as defined in s.
9 115.001 (16) who obtains information under this subsection shall keep the information
10 confidential in the same manner as is required of a public school official under s. 118.125.
11 A law enforcement agency that obtains information under this subsection shall keep the
12 information confidential as required under this subsection and s. 938.396 (1). A social welfare
13 agency that obtains information under this subsection shall keep the information confidential
14 as required under ss. 48.78 and 938.78.

NOTE: Requires that a tribal school official who obtains information from a law enforcement officer under this provision keep the information confidential in the same manner required of public and private school officials.

COMMENT: It is not clear that such a provision could be enforced as the tribal school official could raise a defense of sovereign immunity for violating such a provision. Does the working group wish to provide for disclosure to a tribal school official on the condition that the tribe waives its sovereign immunity with respect to enforcement of this provision? Also see s. 938.396, below.

15 **SECTION 27.** 48.65 (2) (b) of the statutes is amended to read:

16 48.65 (2) (b) A public or parochial school or a tribal school as defined in s. 115.001 (16).

NOTE: The day care license statute requires that, with certain exceptions, a facility that provides care for 4 or more children under the age of 7 must obtain a day care center license. While it is not clear that this

statute applies to a facility operated by a tribe or tribal member on a reservation or off-reservation trust land, this SECTION makes clear that a tribal school is not subject to this statute.

COMMENT: Should it be included in the draft?

SECTION 28. 48.78 (2) (b) of the statutes is amended to read:

48.78 (2) (b) Paragraph (a) does not apply to the confidential exchange of information between an agency and another social welfare agency, a law enforcement agency, a public school ~~or~~, a private school, or a tribal school as defined in s. 115.001 (16) regarding an individual in the care or legal custody of the agency. A social welfare agency that obtains information under this paragraph shall keep the information confidential as required under this section and s. 938.78. A law enforcement agency that obtains information under this paragraph shall keep the information confidential as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information under this paragraph shall keep the information confidential as required under s. 118.125, and a private school or a tribal school that obtains information under this paragraph shall keep the information confidential in the same manner as is required of a public school under s. 118.125.

NOTE: Section 48.78 (2) (a), stats., provides that, subject to certain exceptions, DHFS, a county department of human services or county department of social services, a licensed child welfare agency, or a licensed day care center must keep its records confidential. Section 48.78 (2) (b) provides an exception and permits the confidential exchange of information with a public or private school which is then required to keep the information confidential if required to do so under the pupil records statute. This amendment permits the confidential exchange of information with a tribal school and requires the tribal school to keep the information confidential in same manner required of public and private schools.

COMMENT: It is not clear that such a provision could be enforced as the tribal school could raise a defense of sovereign immunity for violating such a provision. Does the working group wish to provide for disclosure to a tribal school on the condition that the tribe waives its sovereign

immunity with respect to enforcement of this provision? Also see s. 938.78 (2), below.

1 **SECTION 29.** 49.26 (1) (a) 2. bm. of the statutes is created to read:

2 49.26 (1) (a) 2. bm. A tribal school as defined in s. 115.001 (16).

COMMENT: Includes a tribal school in the definition of a “school” under the learnfare program, which requires certain individuals to attend school under certain circumstances as a condition of eligibility under the Wisconsin works program.

3 **SECTION 30.** 49.26 (1) (g) 2. of the statutes is amended to read:

4 49.26 (1) (g) 2. The individual has not graduated from a public ~~or~~ private, or tribal high
5 school or obtained a declaration of equivalency of high school graduation under s. 115.29 (4).

NOTE: Provides an exception for the school attendance requirement under the learnfare program if an individual has graduated from a tribal high school.

6 **SECTION 31.** 103.21 (7) of the statutes is created to read:

7 103.21 (7) “Tribal school” has the meaning given in s. 115.001 (16).

8 **SECTION 32.** 103.23 (2) (intro.), (a), (3m) (c) and (5) of the statutes are amended to read:

9 103.23 (2) (intro.) A minor under 12 years of age may work in a fund-raising sale for
10 a nonprofit organization, a public school ~~or~~ a private school, or a tribal school under the
11 following conditions:

12 (a) Each minor must give the nonprofit organization, public school~~or~~ private school,
13 or tribal school written approval from the minor’s parent or guardian.

14 **SECTION 33.** 103.25 (3m) (c) and (5) of the statutes are amended to read:

15 103.25 (3m) (c) This subsection does not apply to employment of a minor by a
16 newspaper publisher or in a fund-raising sale for a nonprofit organization, a public school ~~or~~
17 a private school, or a tribal school.

1 (5) This section does not apply to employment of a minor in a fund–raising sale for a
2 nonprofit organization, a public school ~~or~~, a private school, or a tribal school.

3 **SECTION 34.** 103.27 (3) of the statutes is amended to read:

4 103.27 (3) This section does not apply to employment of a minor in a fund–raising sale
5 for a nonprofit organization, a public school ~~or~~, a private school, or a tribal school.

6 **SECTION 35.** 103.275 (8) of the statutes is amended to read:

7 103.275 (8) EXCEPTION. This section does not apply to the employment of a minor by
8 a newspaper publisher or in a fund–raising sale for a nonprofit organization, a public school
9 ~~or~~, a private school, or a tribal school.

NOTE: SECTION 31 creates a definition of “tribal school” for purposes of the statutes relating to minors working in the street trades or fund–raising. In general, minors doing fund–raising by selling for a public or private school are exempt from these statutes. The courts have not made clear if these statutes may be applied to tribal members on their own reservations or on off–reservation trust land who are engaged in such activities. However, non–tribal members who are minors may also be fund–raising for a tribal school.

SECTIONS 32 to 35 specify that the statutes do not apply if the child is engaged in fund–raising activities for a tribal school.

10 **SECTION 36.** 103.64 (6) of the statutes is created to read:

11 103.64 (6) “Tribal school” has the meaning given in s. 115.001 (16).

NOTE: Defines tribal school as used in s. 103.71 (1) (b), below.

12 **SECTION 37.** 103.67 (2) (c) of the statutes is amended to read:

13 103.67 (2) (c) Minors 12 years of age or older may be employed in street trades, and
14 any minor may work in fund–raising sales for nonprofit organizations, public schools ~~or~~,
15 private schools, or tribal schools, as provided in ss. 103.21 to 103.31.

NOTE: Relates to SECTIONS 31 to 35, above.

16 **SECTION 38.** 103.71 (1) (b) of the statutes is amended to read:

1 103.71 (1) (b) A diploma or certificate to this effect issued by the superintendent of the
2 parochial school system or by the principal of the parochial or private school or tribal school
3 last attended by such minor. Such superintendent, principal, or clerk shall issue such diploma
4 or certificate upon receipt of any application in behalf of any minor entitled thereto. As used
5 in this paragraph the term “school district” shall apply to all regularly constituted school
6 districts, including union free high school districts.

NOTE: Permits a child who has completed high school, including a tribal
 high school, to be employed during school hours.

7 **SECTION 39.** 115.001 (16) of the statutes is created to read:

8 115.001 (16) “Tribal school” means an institution with an educational program that has
9 as its primary purpose providing education in any grade or grades from kindergarten to 12 and
10 that is controlled by the elected governing body of a federally recognized American Indian
11 tribe or band in Wisconsin or by a tribal educational authority established under the laws of
12 a federally recognized American Indian tribe or band in Wisconsin.

NOTE: Defines tribal school for purposes of chs. 115 to 121, stats.,
 which relate to K–12 education. This definition is also cross–referenced
 in statutes outside these chapters that are being amended to refer to tribal
 schools.

COMMENT: Is this definition acceptable? Should the definition be
 limited to schools that receive contract or grant funds from BIA? Should
 the definition require that the school be located on a tribe’s reservation or
 off–reservation trust land? Should a minimum hours of instruction or
 sequentially progressive curriculum on certain subjects be included?

13 **SECTION 40.** 115.28 (7) (b) and (e) 1. and (11) of the statutes are amended to read:

14 115.28 (7) (b) Subject to the same rules and laws concerning qualifications of applicants
15 and granting and revocation of licenses or certificates under par. (a), the state superintendent
16 shall grant certificates and licenses to teachers in private schools and tribal schools, except that
17 teaching experience requirements for such certificates and licenses may be fulfilled by

1 teaching experience in either public ~~or~~, private, or tribal schools. An applicant is not eligible
2 for a license or certificate unless the state superintendent finds that the private school or tribal
3 school in which the applicant taught offered an adequate educational program during the
4 period of the applicant's teaching therein. Private schools are not obligated to employ only
5 licensed or certified teachers.

NOTE: Provides that although state law does not require that teachers in tribal schools have a state license, a state license may be issued if the applicant who teaches in the tribal school meets the state license criteria. Further provides that appropriate experience in a tribal school is counted in determining teaching experience under the state licensure law.

6 (e) 1. In this paragraph, "alternative education program" means an instructional
7 program, approved by the school board, that utilizes successful alternative or adaptive school
8 structures and teaching techniques and that is incorporated into existing, traditional
9 classrooms or regularly scheduled curricular programs or that is offered in place of regularly
10 scheduled curricular programs. "Alternative educational program" does not include a private
11 school, a tribal school, or a home-based private educational program.

NOTE: For the alternative education program license, specifies that, like a private school, an alternative educational program does not include a tribal school.

12 **(11) DRIVER EDUCATION COURSES.** Approve driver education courses offered by school
13 districts, county children with disabilities education boards, and technical college districts for
14 the purposes of s. 343.16 (1) (c) 1. and establish minimum standards for driver education
15 courses offered in private schools and tribal schools for the purposes of s. 343.16 (1) (c) 3.
16 All driver education courses approved or for which standards are established under this
17 subsection shall do all of the following:

1 (a) Acquaint each student with the hazards posed by farm machinery and animals on
2 highways and by railroad grade crossings and provide instruction in safely dealing with such
3 hazards.

4 (b) Provide at least 30 minutes of instruction relating to organ and tissue donation and
5 organ and tissue donation procedures.

NOTE: Authorizes the state superintendent to establish minimum standards for driver education courses offered in tribal schools so that the courses can be accepted by the Department of Transportation (DOT) under ss. 343.06 (1) (c) and 343.16, stats., which relate to qualifications for a driver's license and examining applicants for a driver's license.

COMMENT: Does the working group wish to permit the state superintendent to impose this requirement on tribal schools? It appears that if the tribal school does not comply with the requirements for the driver education course, the consequence would be that DOT cannot accept the tribal school course for purposes of the driver's license statute.

6 **SECTION 41.** 115.34 (2) of the statutes is amended to read:

7 115.34 (2) The state superintendent shall make payments to school districts ~~and~~ to
8 private schools, and to tribal schools for school lunches served to children in the prior year as
9 determined by the state superintendent from the appropriation under s. 20.255 (2) (cn).
10 Payments to school districts ~~and~~ to private schools, and to tribal schools shall equal the state's
11 matching obligation under 42 USC 1751 et seq. Payments in the current year shall be
12 determined by prorating the state's matching obligation based on the number of school lunches
13 served to children in the prior year. In this subsection, "private school" means any school
14 defined in s. 115.001 (3r) which complies with the requirements of 42 USC 2000d.

NOTE: Adds tribal schools to the school lunch program.

COMMENT: According to DPI staff, DPI currently interprets this statute as applying to tribal schools.

15 **SECTION 42.** 115.341 (1) and (2) of the statutes are amended to read:

1 115.341 (1) From the appropriation under s. 20.255 (2) (cm), the state superintendent
2 shall reimburse each school board 10 cents for each breakfast served at a school that meets the
3 requirements of 7 CFR 220.8 or 220.8a, whichever is applicable, and shall reimburse each
4 governing body of a private school or tribal school 10 cents for each breakfast served at the
5 private school or tribal school that meets the requirements of 7 CFR 220.8 or 220.8a,
6 whichever is applicable.

7 (2) If the appropriation under s. 20.255 (2) (cm) in any fiscal year is insufficient to pay
8 the full amount of aid under this section, the state superintendent shall prorate state aid
9 payments among the school boards and governing bodies of private schools and tribal schools
10 entitled to the aid.

NOTE: Adds tribal schools to the school breakfast program.

COMMENT: According to DPI staff, DPI currently interprets this statute
as applying to tribal schools.

11 **SECTION 43.** 115.345 (7m) of the statutes is amended to read:

12 115.345 (7m) A private school or tribal school may establish a food services plan for
13 elderly persons. If the plan meets all of the requirements of this section and is approved by
14 the state superintendent, the private school or tribal school is eligible for reimbursement in the
15 same manner as school districts under sub. (5).

NOTE: Adds tribal schools as eligible for reimbursement for a food
services plan for the elderly.

16 **SECTION 44.** 115.36 (1), (2) (a), (b) and (d) 3. of the statutes are amended to read:

17 115.36 (1) The purpose of this section is to enable and encourage public ~~and~~, private,
18 and tribal schools to develop comprehensive programs to prevent or ameliorate alcohol and
19 other drug abuse among minors.

1 (2) (a) Develop and conduct training programs for the professional staff of public ~~and~~,
2 private, and tribal schools in alcohol and other drug abuse prevention, intervention, and
3 instruction programs.

4 (b) Provide consultation and technical assistance to public ~~and~~, private, and tribal
5 schools for the development and implementation of alcohol and other drug abuse prevention,
6 intervention, and instruction programs.

7 (d) 3. The systematic dissemination of information concerning available resources to
8 appropriate public ~~and~~, private, and tribal school staff.

NOTE: Includes tribal schools in DPI's program to assist schools in
 developing alcohol and other drug abuse programs.

9 **SECTION 45.** 115.365 (1), (2) (a) and (b) of the statutes are amended to read:

10 115.365 (1) The purpose of this section is to enable and encourage public ~~and~~, private,
11 and tribal schools to develop programs designed to prevent suicide among minors.

12 (2) (a) Develop and conduct training programs in suicide prevention for the
13 professional staff of public ~~and~~, private, and tribal schools and county departments under ss.
14 46.215, 46.22, and 51.42. The programs shall include information on how to assist minors in
15 the positive emotional development which will help prevent suicidal tendencies; the
16 detection, by minors, school staff, and parents, of conditions which indicate suicidal
17 tendencies; the proper action to take when there is reason to believe that a minor has suicidal
18 tendencies or is contemplating suicide; and the coordination of school suicide prevention
19 programs and activities with the suicide prevention and intervention programs and activities
20 of other state and local agencies. Persons other than the professional staff of public ~~and~~,
21 private, and tribal schools and county departments under ss. 46.215, 46.22, and 51.42 may

1 attend the training programs. The department may charge such persons a fee sufficient to
2 cover the increased costs to the department of their participation in the programs.

3 (b) Provide consultation and technical assistance to public ~~and~~ private, and tribal
4 schools for the development and implementation of suicide prevention programs and the
5 coordination of those programs with the suicide prevention and intervention programs of other
6 state and local agencies.

NOTE: Includes tribal schools in DPI's program to assist schools in
developing suicide prevention programs.

7 **SECTION 46.** 115.368 (1), (2) (a) and (b) of the statutes are amended to read:

8 115.368 (1) The purpose of this section is to enable and encourage public ~~and~~ private,
9 and tribal schools to develop protective behaviors programs and anti-offender behavior
10 programs designed to assist minors and their parents or guardians in recognizing, avoiding,
11 preventing, and halting physically or psychologically intrusive or abusive situations that may
12 be harmful to minors.

13 (2) (a) Develop and conduct protective behaviors training programs for the professional
14 staff of public ~~and~~ private, and tribal schools and counties under ss. 46.034, 46.215, 46.22,
15 46.23, 51.42, and 51.437. The training programs shall include information on how to assist
16 a minor and his or her parent or guardian in recognizing, avoiding, preventing, and halting
17 physically or psychologically intrusive or abusive situations that may be harmful to the minor,
18 including child abuse, sexual abuse, and child enticement. The training programs shall
19 emphasize how to help minors to develop positive psychological, emotional, and
20 problem-solving responses to such situations, and to avoid relying on negative, fearful, or
21 solely reactive methods of dealing with such situations. The training programs shall also
22 include information on the detection, by other minors, their parents or guardians, and school

1 staff, of conditions that indicate that a minor is being or has been subjected to such situations;
2 the proper action to take when there is reason to believe that a minor is being or has been
3 subjected to such situations; and the coordination of school protective behaviors programs and
4 activities with programs and activities of other state and local agencies. Persons other than
5 the professional staff of public ~~and~~, private, and tribal schools and counties under ss. 46.034,
6 46.215, 46.22, 46.23, 51.42, and 51.437 may attend the training programs. The department
7 may charge such persons a fee sufficient to cover the increased costs of materials, but not
8 personnel cost, to the department of their participation in the programs. The department may
9 not deny any resident of Wisconsin the opportunity to participate in a program if the person
10 is unable to pay any fee.

11 (b) Provide consultation and technical assistance to public ~~and~~, private, and tribal
12 schools for the development and implementation of protective behaviors programs and the
13 coordination of those programs with programs of other state and local agencies.

NOTE: Includes tribal schools in DPI's program to assist schools in developing protective behavior programs.

14 **SECTION 47.** 115.42 (1) (a) 2. and (2) (a) 2. of the statutes are amended to read:

15 115.42 (1) (a) 2. The person is licensed as a teacher by the state superintendent or
16 employed as a teacher in a private school or tribal school located in this state.

17 (2) (a) 2. The person maintains his or her license as a teacher by the state superintendent
18 or remains employed in a private school or tribal school located in this state.

NOTE: Includes teachers employed at a tribal school as those eligible for grants if they are certified by the national board for professional teaching standards and meet other criteria.

19 **SECTION 48.** 115.52 (3) (b) 1., 2. and 10. of the statutes are amended to read:

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

4 2. Provide technical assistance and consultation services to local educational agencies,
5 cooperative educational service agencies, county children with disabilities education boards,
6 private schools, tribal schools, and others.

7 10. Rent or lease technological materials and assistive technology devices, as defined
8 in s. 115.76 (1), to local educational agencies, cooperative educational service agencies,
9 county children with disabilities education boards, ~~and~~ private schools, and tribal schools.

NOTE: Includes tribal schools with those groups to which the Wisconsin
educational program for the deaf and hard of hearing may provide the
services specified.

10 **SECTION 49.** 115.525 (3) (b) 2. of the statutes is amended to read:

11 115.525 (3) (b) 2. Provide technical assistance and consultation services to entities such
12 as local educational agencies, cooperative educational service agencies, county children with
13 disabilities education boards ~~and~~, private schools, and tribal schools.

NOTE: Includes tribal schools with those groups to which the Wisconsin
center for the blind and visually impaired may provide technical
assistance and consultation services.

14 **SECTION 50.** 115.77 (1m) (d) of the statutes is amended to read:

15 115.77 (1m) (d) Ensures that children with disabilities who are enrolled in private
16 schools and facilities or tribal schools are provided special education and related services, in
17 accordance with individualized education programs, at no cost to them or to their parents, if
18 such children are placed in, or referred to, such schools or facilities by a local educational
19 agency to satisfy the requirements of this subchapter or applicable federal law.

NOTE: Provides that if the local educational agency (LEA) (defined in s. 115.76 (10), stats., and typically the school district of the pupil's residence) places a child with a disability in a tribal school to receive special education services, the LEA pays for the service. However, this applies only if the LEA placed the child in or referred the child to the tribal school. It does not apply if the child simply enrolled in a tribal school on their own initiative (unless s. 115.791, stats. (discussed below), applies).

COMMENT: The Menominee Tribe specifically requested that this item be included in the preliminary bill draft. Tribal schools under contract with the BIA receive federal special education funding. Are tribal schools under contract with the BIA considered to be LEAs under federal law?

1 **SECTION 51.** 115.77 (1m) (e) of the statutes is amended to read:

2 115.77 **(1m)** (e) To the extent consistent with the number and location of children with
3 disabilities residing in the local educational agency who are enrolled by their parents in private
4 elementary and secondary schools or tribal schools, ensures that those children have an
5 opportunity to participate in special education and related services and that the amount spent
6 to provide those services by the local educational agency is equal to a proportionate amount
7 of federal funds made available under this subchapter.

NOTE: Adds children with a disability who are enrolled in tribal schools by their parents along with those enrolled in private schools by their parents with those who have an opportunity to participate in special education and related services.

COMMENT: If a tribal school receives BIA special education funding for a child with a disability, is this amendment appropriate?

8 **SECTION 52.** 115.77 (4) (m) of the statutes is amended to read:

9 115.77 **(4)** (m) Information relating to access of private school and tribal school pupils
10 to the local educational agency's special education and related services.

NOTE: Requires an LEA to submit information to DPI about the access of tribal school pupils to special education services.

11 **SECTION 53.** 115.791 of the statutes is amended to read:

1 **115.791 Reimbursement for private or tribal school placement.** (1) If the parents
2 of a child with a disability who previously received special education and related services
3 under the authority of a local educational agency enroll the child in a private elementary or
4 secondary school or a tribal school without the consent of or referral by the local educational
5 agency, a court or a hearing officer may require the local educational agency to reimburse the
6 parents for the cost of that enrollment if the court or hearing officer finds that the local
7 educational agency had not made a free appropriate public education available to the child in
8 a timely manner before that enrollment.

9 (2) The cost of reimbursement described in sub. (1) may be reduced or denied if any
10 of the following applies:

11 (a) At the most recent individualized education program meeting that the parents
12 attended before removal of the child from the local educational agency, the parents did not
13 inform the individualized education program team of their concerns, their rejection of the
14 placement proposed by the local educational agency to provide a free appropriate public
15 education to their child and their intent to enroll the child in a private school or tribal school
16 at public expense; or at least 10 business days, including any holidays that occur on a business
17 day, before the removal of the child from the local educational agency, the parents did not give
18 written notice to the local educational agency of their concerns, their rejection of the
19 placement and their intent to enroll the child in a private school or tribal school at public
20 expense.

21 (b) If, before the parents' removal of the child from the local educational agency, the
22 local educational agency notified the parents under s. 115.792 of its intent to evaluate the child,
23 including a statement of the purpose of the evaluation that was appropriate and reasonable,
24 but the parents did not make the child available for the evaluation.

1 (c) A court finds the parents' actions unreasonable.

2 (3) Notwithstanding the notice requirement in sub. (2) (a), the cost of reimbursement
3 may not be reduced or denied for failure to provide such notice if any of the following apply:

4 (a) The parent is illiterate and cannot write in English.

5 (b) Compliance with sub. (2) (a) would likely result in physical or serious emotional
6 harm to the child.

7 (c) The local educational agency prevented the parent from providing such notice.

8 (d) The parents had not received notice, pursuant to s. 115.792, of the notice
9 requirement in sub. (2) (a).

10 (4) Subject to s. 115.77 (1m) (d) and (e), this section does not require a local educational
11 agency to pay the cost of education, including special education and related services, of a child
12 with a disability at a private school or facility or a tribal school if the local educational agency
13 made a free appropriate public education available to the child and the child's parents elected
14 to place the child in a private school or facility or in a tribal school.

NOTE: Requires that the LEA pay for education at a tribal school for a child who has a disability and is in need of special education or services if the child enrolls in the tribal school because the public school is not making a free appropriate public education available and certain conditions are met.

COMMENT: If a tribal school receives BIA special education funding for a child with a disability, is this amendment appropriate?

15 **SECTION 54.** 115.792 (3) (b) 8. of the statutes is amended to read:

16 115.792 (3) (b) 8. Requirements for the unilateral placement by parents of pupils in
17 private schools or tribal schools at public expense.

NOTE: Requires the LEA to provide information to the parents of a child with a disability certain information about special education laws, including the requirements for unilateral placement at a tribal school.

18 **SECTION 55.** 116.01 of the statutes is amended to read:

1 **116.01 Purpose.** The organization of school districts in Wisconsin is such that the
2 legislature recognizes the need for a service unit between the school district and the state
3 superintendent. The cooperative educational service agencies are designed to serve
4 educational needs in all areas of Wisconsin by serving as a link both between school districts
5 and between school districts and the state. Cooperative educational service agencies may
6 provide leadership, coordination, and education services to school districts, University of
7 Wisconsin System institutions, and technical colleges. Cooperative educational service
8 agencies may facilitate communication and cooperation among all public ~~and, private, and~~
9 tribal schools, agencies, and organizations that provide services to pupils.

NOTE: Authorizes cooperative educational service agencies (CESAs) to
facilitate communication and cooperation among public, private, and
tribal schools, agencies, and organizations that provide services to
pupils.

10 **SECTION 56.** 116.032 (1) and (3) (a) of the statutes are amended to read:

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

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

- 19 1. The service or program was developed for and has been provided to public schools.
- 20 2. Providing the service or program will not have a negative effect on the agency's
21 ability to serve school districts.

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

1 **SECTION 57.** 118.08 (1) of the statutes is amended to read:

2 118.08 (1) On any street or highway which borders the grounds of any public ~~or~~ private,
3 or tribal school in which school is held for a term of not less than 6 months, the authority in
4 charge of the maintenance of the street or highway shall erect black and yellow “school”
5 warning signs. The authority may also designate school crossings across any street or
6 highway, whether or not the street or highway borders on the grounds of a school.

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

7 **SECTION 58.** 118.125 (2) (n) of the statutes is amended to read:

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

NOTE: If there is an interagency agreement and a prohibition on redisclosure, permits a school board to disclose pupil records to a tribal school for the purpose of providing services to a pupil before adjudication.

COMMENT: Should the statute specify that the agreement must contain a waiver of sovereign immunity by the tribe so that there is an enforcement mechanism if the tribal school discloses confidential records?

15 **SECTION 59.** 118.125 (4) of the statutes is amended to read:

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

NOTE: Adds a reference to tribal schools in referring to a center for the developmentally disabled that provides an educational program directly or in addition to that provided by a tribal school.

COMMENT: Under current law, the requirement that a school district transfer records to a school would include a requirement that a school district transfer records to a tribal school. Have the tribal schools experienced problems getting such records? If so, the statute could be amended to refer to tribal schools.

13 **SECTION 60.** 118.127 of the statutes is amended to read:

14 **118.127 Law enforcement agency information.** (1) Upon receipt of information
15 from a law enforcement agency under s. 48.396 (1) or 938.396 (1) or (1m), the school district
16 administrator ~~or~~, private school administrator, or tribal school administrator who receives the
17 information shall notify any pupil named in the information, and the parent or guardian of any
18 minor pupil named in the information, of the information.

1 (2) A school district ~~or, private school,~~ or tribal school may disclose information from
2 law enforcement officers' records obtained under s. 938.396 (1m) only to persons employed
3 by the school district who are required by the department under s. 115.28 (7) to hold a license,
4 to persons employed by the private school or tribal school as teachers and to other school
5 district ~~or, private school,~~ or tribal school officials who have been determined by the school
6 board or governing body of the private school or tribal school to have legitimate educational
7 interests, including safety interests, in that information. In addition, if that information relates
8 to a pupil of the school district ~~or, private school,~~ or tribal school, the school district ~~or, private~~
9 ~~school,~~ or tribal school may also disclose that information to those employees of the school
10 district ~~or, private school,~~ or tribal school who have been designated by the school board or
11 governing body of the private school or tribal school to receive that information for the
12 purpose of providing treatment programs for pupils enrolled in the school district ~~or, private~~
13 ~~school,~~ or tribal school. A school district may not use law enforcement officers' records
14 obtained under s. 938.396 (1m) as the sole basis for expelling or suspending a pupil or as the
15 sole basis for taking any other disciplinary action, including action under the school district's
16 athletic code, against a pupil.

NOTE: The amendment to this section relates to the amendments to s. 48.396, above, and s. 938.396, below. If law enforcement records are disclosed to a tribal school under those provisions, the amendment to s. 118.127 imposes duties on the tribal school that are the same as those duties imposed on a private school that receives such information, namely, limiting to whom at the tribal school the information may be disclosed and notifying the pupil and the pupil's parent or guardian that the school has received the information.

COMMENT: See the COMMENTS for ss. 48.396 and 938.396 regarding whether these provisions could be enforced with respect to a tribal school.

17 **SECTION 61.** 118.145 (3) and (4) of the statutes are amended to read:

1 118.145 (3) If the superintendent or principal of a private school or of a tribal school
2 files with the department the course of study for elementary grades prescribed by such school
3 and if such course of study is substantially equivalent to the course of study prepared for
4 elementary grades by the department, a certificate or diploma or other written evidence issued
5 by the superintendent or principal of the private school or tribal school showing that the pupil
6 has completed such course of study shall entitle the pupil to admission to a public high school.
7 The certificate or diploma or a certified copy thereof or a certified copy of a list of graduates
8 shall be filed with the school district clerk of the school district operating the high school.

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

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

15 **SECTION 62.** 118.15 (1) (a) and (4) of the statutes are amended to read:

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

7 (4) Instruction in a home-based private educational program that meets all of the
8 criteria under s. 118.165 (1) may be substituted for attendance at a public ~~or~~, private, or tribal
9 school.

NOTE: In the compulsory attendance laws, includes tribal schools as an alternative to attending a public school, a private school, or a home-based private educational program.

COMMENT: Under current law, it is possible that a pupil attending a tribal school could be considered a truant or dropout as the statutes do not refer to attending a tribal school.

10 **SECTION 63.** 118.15 (1) (d) 4. of the statutes is amended to read:

11 118.15 (1) (d) 4. Enrollment in any nonsectarian private school or program or tribal
12 school, located in the school district in which the child resides, which complies with the
13 requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant
14 to a contractual agreement which provides for the payment of the child's tuition by the school
15 district.

NOTE: A child's parent or the child may request that the school board provide program or curriculum modifications, including several items specified in the statutes, including s. 118.15 (1) (d) 4. The school board then decides the matter. This amendment would permit a curriculum modification to attend a tribal school.

16 **SECTION 64.** 118.153 (1) (b) of the statutes is amended to read:

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

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

5 **SECTION 65.** 118.16 of the statutes is amended to read:

6 **118.16 School attendance enforcement. (1)** In this section:

7 (a) “Habitual truant” means a pupil who is absent from school without an acceptable
8 excuse under sub. (4) and s. 118.15 for part or all of 5 or more days on which school is held
9 during a school semester.

10 (b) “School attendance officer” means an employee designated by the school board to
11 deal with matters relating to school attendance and truancy. “School attendance officer” does
12 not include an individual designated under sub. (2m) (a) to take into custody a child who is
13 absent from school without an acceptable excuse under s. 118.15 unless that individual has
14 also been designated by the school board to deal with matters relating to school attendance and
15 truancy.

16 (c) “Truancy” means any absence of part or all of one or more days from school during
17 which the school attendance officer, principal or teacher has not been notified of the legal
18 cause of such absence by the parent or guardian of the absent pupil, and also means intermittent
19 attendance carried on for the purpose of defeating the intent of s. 118.15.

1 **(1m)** The period during which a pupil is absent from school due to a suspension or
2 expulsion under s. 120.13 or 119.25 is neither an absence without an acceptable excuse for the
3 purposes of sub. (1) (a) nor an absence without legal cause for the purposes of sub. (1) (c).

4 **(2)** The school attendance officer:

5 (a) Shall determine daily which pupils enrolled in the school district are absent from
6 school and whether that absence is excused under s. 118.15.

7 (b) Annually, on or before August 1, shall determine how many pupils enrolled in the
8 school district were absent in the previous year and whether the absences were excused under
9 s. 118.15 and shall notify the state superintendent of the determination.

10 (c) Except as provided under pars. (cg) and (cr), shall notify the parent or guardian of
11 a child who has been truant of the child's truancy and direct the parent or guardian to return
12 the child to school no later than the next day on which school is in session or to provide an
13 excuse under s. 118.15. The notice under this paragraph shall be given before the end of the
14 2nd school day after receiving a report of an unexcused absence. The notice may be made by
15 personal contact, mail or telephone call of which a written record is kept, except that notice
16 by personal contact or telephone call shall be attempted before notice by mail may be given.

17 (cg) Shall notify the parent or guardian of a child who is a habitual truant, by registered
18 or certified mail, when the child initially becomes a habitual truant. The notice shall include
19 all of the following:

20 1. A statement of the parent's or guardian's responsibility, under s. 118.15 (1) (a), to
21 cause the child to attend school regularly.

22 2. A statement that the parent, guardian or child may request program or curriculum
23 modifications for the child under s. 118.15 (1) (d) and that the child may be eligible for
24 enrollment in a program for children at risk under s. 118.153 (3).

1 3. A request that the parent or guardian meet with appropriate school personnel to
2 discuss the child's truancy. The notice shall include the name of the school personnel with
3 whom the parent or guardian should meet, a date, time and place for the meeting and the name,
4 address and telephone number of a person to contact to arrange a different date, time or place.
5 The date for the meeting shall be within 5 school days after the date that the notice is sent,
6 except that with the consent of the child's parent or guardian the date for the meeting may be
7 extended for an additional 5 school days.

8 4. A statement of the penalties, under s. 118.15 (5), that may be imposed on the parent
9 or guardian if he or she fails to cause the child to attend school regularly as required under s.
10 118.15 (1) (a).

11 (cr) After the notice required under par. (cg) has been given, shall notify the parent or
12 guardian of a habitual truant of the habitual truant's unexcused absences as provided in the
13 plan under s. 118.162 (4) (a). After the notice required under par. (cg) has been given, par. (c)
14 does not apply.

15 (d) May visit any place of employment in the school district to ascertain whether any
16 minors are employed there contrary to law. The officer shall require that school certificates
17 and lists of minors who are employed there be produced for inspection, and shall report all
18 cases of illegal employment to the proper school authorities and to the department of
19 workforce development.

20 (e) Shall have access to information regarding the attendance of any child between the
21 ages of 6 and 18 who is a resident of the school district or who claims or is claimed to be in
22 attendance at a private school or tribal school located in the school district.

1 **(2m)** (a) A school district administrator may designate any of the following individuals
2 to take a child who resides in the school district and who is absent from school without an
3 acceptable excuse under s. 118.15 into custody under s. 938.19 (1m):

4 1. An employee of the school district who is directly involved in the provision of
5 educational programs to the truant child.

6 2. An employee of the school district who is directly involved in the provision of a
7 modified program or curriculum under s. 118.15 (1) (d), a program for children at risk under
8 s. 118.153 or an alternative educational program under s. 119.82 or any other alternative
9 educational program to children who attend the school attended by the truant child, if the
10 school district administrator believes that the program or curriculum may be appropriate for
11 the truant child.

12 3. A school social worker employed by the school district who provides services to
13 children attending the school attended by the truant child, if the school district administrator
14 believes that the services provided by the social worker may be appropriate for the truant child.

15 4. An employee of a social services agency who is directly involved in the provision
16 of social services to the truant child or the child's family.

17 5. A school attendance officer, but only if the school attendance officer meets the criteria
18 specified in subds. 1., 2. or 3.

19 (b) A designation under par. (a) shall be in writing and shall specifically identify the
20 child whom the individual is authorized to take into custody.

21 (c) A school district administrator may not designate an individual under par. (a) unless
22 the individual agrees to the designation in writing.

23 (d) A school district administrator who makes a designation under par. (a) shall provide
24 each individual so designated with an identification card of a form determined by the school

1 board. The designee shall carry the identification card on his or her person at all times while
2 the designee is on official duty under s. 938.19 (1m) and shall exhibit the identification card
3 to any person to whom the designee represents himself or herself as a person authorized to take
4 a child into custody under s. 938.19 (1m).

5 (e) A school district administrator who makes a designation under par. (a) or the
6 individual designated under par. (a) shall immediately attempt to notify, by personal contact
7 or telephone call, the child's parent, guardian and legal custodian that the designation has been
8 made and that the child may be taken into custody under s. 938.19 (1m). The school district
9 administrator, or the designee, is not required to notify a parent, guardian or legal custodian
10 under this paragraph if the parent, guardian or legal custodian is the person who requested that
11 the child be taken into custody under s. 938.19 (1m).

12 (3) All private schools and tribal schools shall keep a record containing the information
13 required under ss. 115.30 (2) and 120.18. The record shall be open to the inspection of school
14 attendance officers at all reasonable times. When called upon by any school attendance
15 officer, the school shall furnish, on forms supplied by the school attendance officer, the
16 information required under ss. 115.30 (2) and 120.18 in regard to any child between the ages
17 of 6 and 18 who is a resident of the school district or who claims or is claimed to be in
18 attendance at the school.

19 (4) (a) The school board shall establish a written attendance policy specifying the
20 reasons for which pupils may be permitted to be absent from a public school under s. 118.15
21 and shall require the teachers employed in the school district to submit to the school attendance
22 officer daily attendance reports on all pupils under their charge.

23 (b) No public school may deny a pupil credit in a course or subject solely because of
24 the pupil's unexcused absences or suspensions from school. The attendance policy under par.

1 (a) shall specify the conditions under which a pupil may be permitted to take examinations
2 missed during absences, other than suspensions, and the conditions under which a pupil shall
3 be permitted to take any quarterly, semester or grading period examinations and complete any
4 course work missed during a period of suspension.

5 (c) The school board may establish policies which provide that as a consequence of a
6 pupil's truancy the pupil may be assigned to detention or to a supervised, directed study
7 program. The program need not be held during the regular school day. The policies under this
8 paragraph shall specify the conditions under which credit may be given for work completed
9 during the period of detention or assignment to a supervised, directed study program. A pupil
10 shall be permitted to take any examinations missed during a period of assignment to a
11 supervised, directed study program.

12 (cm) 1. The school board may establish policies which provide that a pupil of an age
13 eligible for high school enrollment in the school district, as determined by the school board,
14 may be assigned to a period of assessment as a consequence of the pupil's truancy or upon the
15 pupil's return to school from placement in a correctional facility, mental health treatment
16 facility, alcohol and other drug abuse treatment facility or other out-of-school placement. The
17 policies shall specify the conditions under which a pupil may participate in the assessment
18 without being in violation of s. 118.15 and the maximum length of time that a pupil may be
19 assigned to an assessment period.

20 2. A school board may not assign a pupil to an assessment period without the written
21 approval of the pupil's parent or guardian. A school board may not assign a pupil to an
22 assessment period for longer than the time necessary to complete the assessment and place the
23 pupil in an appropriate education program or 8 weeks, whichever is less. A school board may
24 not assign a pupil to an assessment period more than once and may not assign a pupil to an

1 assessment period if the school district has an alternative education program, as defined in s.
2 115.28 (7) (e) 1., available for the pupil that is appropriate for the pupil's needs. An assessment
3 need not be conducted during the regular school day.

4 3. The goals of an assessment period are to develop an educational plan for the pupil,
5 implement an appropriate transitional plan and facilitate the pupil's placement in an education
6 program in which the pupil will be able to succeed. The school board shall provide pupils who
7 are assigned to an assessment period with information on other education programs that the
8 school district or other community providers have available for the pupil. The assessment may
9 include any of the following new or previously completed activities:

- 10 a. An assessment for problems with alcohol or other drugs.
11 b. An assessment of individual educational needs.
12 c. An assessment of whether the pupil is encountering problems in the community or
13 at home that require intervention by a social worker.
14 d. A vocational assessment, which may include career counseling.
15 e. A medical assessment.

16 (d) The school board shall provide each pupil enrolled in the public schools in the
17 district with a copy of the policies established under this subsection and shall file a copy of
18 the policies in each school in the district. In addition, the school board shall make copies
19 available upon request.

20 (e) Except as provided under s. 119.55, a school board may establish one or more youth
21 service centers for the counseling of children who are taken into custody under s. 938.19 (1)

22 (d) 10. for being absent from school without an acceptable excuse under s. 118.15.

23 (5) Except as provided in sub. (5m), before any proceeding may be brought against a
24 child under s. 938.13 (6) for habitual truancy or under s. 938.125 (2) or 938.17 (2) for a

1 violation of an ordinance enacted under s. 118.163 (2) or against the child's parent or guardian
2 under s. 118.15 for failure to cause the child to attend school regularly, the school attendance
3 officer shall provide evidence that appropriate school personnel in the school or school district
4 in which the child is enrolled have, within the school year during which the truancy occurred,
5 done all of the following:

6 (a) Met with the child's parent or guardian to discuss the child's truancy or attempted
7 to meet with the child's parent or guardian and received no response or were refused.

8 (b) Provided an opportunity for educational counseling to the child to determine
9 whether a change in the child's curriculum would resolve the child's truancy and have
10 considered curriculum modifications under s. 118.15 (1) (d).

11 (c) Evaluated the child to determine whether learning problems may be a cause of the
12 child's truancy and, if so, have taken steps to overcome the learning problems, except that the
13 child need not be evaluated if tests administered to the child within the previous year indicate
14 that the child is performing at his or her grade level.

15 (d) Conducted an evaluation to determine whether social problems may be a cause of
16 the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

17 **(5m)** Subsection (5) (a) does not apply if a meeting under sub. (2) (cg) 3. is not held
18 within 10 school days after the date that the notice under sub. (2) (cg) is sent. Subsection (5)
19 (b), (c) and (d) does not apply if the school attendance officer provides evidence that
20 appropriate school personnel were unable to carry out the activity due to the child's absences
21 from school.

22 **(6)** (a) If the school attendance officer receives evidence that activities under sub. (5)
23 have been completed or were not required to be completed as provided in sub. (5m), the school
24 attendance officer may do any of the following:

1 1. File information on any child who continues to be truant with the court assigned to
2 exercise jurisdiction under chs. 48 and 938 in accordance with s. 938.24. Filing information
3 on a child under this subdivision does not preclude concurrent prosecution of the child's parent
4 or guardian under s. 118.15 (5).

5 2. Refer the child to a teen court program if all of the following conditions apply:

6 a. The chief judge of the judicial administrative district has approved a teen court
7 program established in the child's county of residence and has authorized the school
8 attendance officer to refer children to the teen court program and the school attendance officer
9 determines that participation in the teen court program will likely benefit the child and the
10 community.

11 b. The child and the child's parent, guardian and legal custodian consent to the child's
12 participation in the teen court program.

13 c. The child has not successfully completed participation in a teen court program during
14 the 2 years before the date on which the school attendance officer received evidence that
15 activities under sub. (5) have been completed or were not completed due to the child's absence
16 from school as provided in sub. (5m).

17 (b) If a child who is referred to a teen court program under par. (a) 2. is not eligible for
18 participation in the teen court program or does not successfully complete participation in the
19 teen court program, the person administering the teen court program shall file information on
20 the child with the court assigned to exercise jurisdiction under chs. 48 and 938 in accordance
21 with s. 938.24. Filing information on a child under this paragraph does not preclude
22 concurrent prosecution of the child's parent or guardian under s. 118.15 (5).

23 **(7)** Any school district administrator, principal, teacher or school attendance officer
24 who violates this section shall forfeit not less than \$5 nor more than \$25.

NOTE: Current law does not clearly provide that attendance at a tribal school satisfies the compulsory attendance laws. This draft provides that a child attending a tribal school does so. Although only s. 118.16 (2) (e) and (3) are amended to include tribal schools (and they would be the only provisions included in a bill draft), all of s. 118.16, stats., is reproduced as it provides information on school attendance enforcement and describes activities that a tribal school would become involved with if its pupils are to be deemed as not violating compulsory attendance laws.

Of particular interest is s. 118.16 (5) which specifies the activities that must occur (unless s. 118.16 (5m), stats., applies) before a proceeding may be brought to have a court declare a juvenile in need of protection or services as an habitual truant or as a child who violated a municipal truancy or habitual truancy ordinance or to proceed against a child's parent or guardian for the crime of failing to cause the child to attend school.

With the amendment of s. 118.16 (3), a tribal school would be required to keep records containing the information in: (1) s. 115.30 (2) (which includes the dates school is held at the tribal school, the names and ages of pupils, the names and addresses of parents of the pupils, and the dates pupils were present at school); and (2) s. 120.18 (see below). Moreover, the amendment of s. 118.16 (2) (e) requires that the school board's school attendance officer have access to information kept by the tribal school regarding attendance claimed at the tribal school.

COMMENT: Are tribal schools willing to undertake these activities and make this information available to the school attendance officer, or should the statutes be amended to treat tribal schools differently than private schools? How would a requirement that tribal schools keep and make available records be enforced?

COMMENT: This draft does not amend s. 118.163, stats., relating to municipal truancy and school dropout ordinances. However, the effect of the amendments noted above that include tribal schools will affect s. 118.163 because that statute cross-references the definitions of truancy and dropout that are amended above.

- 1 **SECTION 66.** 118.162 (1) (am) and (m) of the statutes are created to read:
- 2 118.162 (1) (am) A representative from each tribal school in the county, designated by
- 3 the governing body of that tribal school that he or she represents, who may be a member of

1 the tribal school governing body, school administrator, teacher, pupil services professional,
2 or parent of a child enrolled in that tribal school.

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

NOTE: Adds to the county committee that advises on school districts' truancy plans: (a) a representative of each tribal school in the county; and (b) a parent of a tribal school pupil.

COMMENT: The latter provision is modeled after the provision for a parent of a private school pupil being appointed to the county committee.

5 **SECTION 67.** 118.255 (2) (a), (b) and (c) of the statutes are amended to read:

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

19 (b) A school board, cooperative educational service agency, or county children with
20 disabilities education board providing services under this section may enter into agreements
21 with the administrator of a private school or tribal school on the scheduling, space, and other

1 necessary arrangements for performance of such health treatment services. A school board,
2 cooperative educational service agency, or county children with disabilities education board
3 shall not pay any private school or tribal school for any services or facilities provided under
4 this section. Control of the health treatment services program shall rest with the public school
5 board, cooperative educational service agency, or county children with disabilities education
6 board.

7 (c) A school board, cooperative educational service agency, or county children with
8 disabilities education board may provide health treatment services only within private school
9 or tribal school facilities located within the boundaries of the school district, cooperative
10 educational service agency, or county.

NOTE: Permits school boards, CESAs, and county children with disabilities education boards to provide health treatment services to tribal school pupils at tribal schools under certain circumstances.

11 **SECTION 68.** 118.30 (7) of the statutes is created to read:

12 118.30 (7) If requested by a tribal school, the state superintendent shall provide to the
13 tribal school any examination adopted under sub. (1) for the purpose of allowing the tribal
14 school to administer the examination to pupils at the tribal school. This requirement applies
15 only if the state superintendent is satisfied that the tribal school will protect the security and
16 confidentiality of the examination.

NOTE: Provides that the state superintendent must provide the 4th, 8th, and 10th grade Wisconsin knowledge and concepts examinations (WKCE) to tribal schools upon request, if the state superintendent is satisfied that the tribal school will protect the security and confidentiality of the examination.

COMMENT: This provision, which does not apply to private schools, was not included in the original recommendations by the Menominee Tribe but was added based on a comment that the BIA requires the tribal schools that have contracts with the BIA to administer state

examinations. Is this correct? Is this provision needed? If so, should DPI be permitted to charge tribal schools for these examinations?

1 **SECTION 69.** 118.40 (2m) (am) of the statutes is amended to read:

2 118.40 **(2m)** (am) At least 30 days before entering in a contract under this subsection
3 that would convert a private school or a tribal school to a charter school or that would establish
4 a charter school that is not an instrumentality of the school district, the school board shall hold
5 a public hearing on the contract. At the hearing, the school board shall consider the level of
6 employee and parental support for the establishment of the charter school and the fiscal impact
7 of the establishment of the charter school on the school district.

NOTE: Requires a public hearing before a school board could enter into a contract to convert a tribal school to a charter school.

8 **SECTION 70.** 120.18 (1) (a) 2. and (s) of the statutes are amended to read:

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

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

NOTE: In the annual school district report submitted by the school district clerk to DPI, requires inclusion of the above information about tribal schools and tribal school pupils.

1 **SECTION 71.** 121.05 (1) (a) 7. of the statutes is amended to read:

2 121.05 (1) (a) 7. Pupils enrolled in a nonsectarian private school or program or tribal
3 school under s. 118.15 (1) (d) 4.

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

COMMENT: If s. 118.15 (1) (d) 4., is not amended, then this provision should not be amended.

4 **SECTION 72.** 121.76 (1) (a) of the statutes is amended to read:

5 121.76 (1) (a) “Agency of service” means a school board, board of control of a
6 cooperative educational service agency, county children with disabilities education board, or
7 governing body of a nonsectarian private school or university model school, which provides
8 services for which tuition may be charged.

NOTE: Current law defines “agency of service” for purposes of subch. V, ch. 121, stats., which describes various circumstances under which a pupil may attend a school other than a public school in the school district of residence. The entity providing the services is the agency of service. Subchapter V relates to tuition payments and explains how aid is adjusted in certain situations. This provision is reproduced for informational purposes without amendment inasmuch as it refers to a private school. If aid is provided to tribal schools, subch. V should be carefully reviewed to determine how reference to a tribal school should be included.

9 **SECTION 73.** 121.78 (4) of the statutes is amended to read:

10 121.78 (4) COURT-ORDERED EDUCATIONAL SERVICES. If a pupil is receiving educational
11 services as the result of a court order under s. 48.345 (12) or 938.34 (7d), the school board
12 of the school district in which the pupil resided at the time of issuance of the court order shall
13 pay tuition for the pupil. A school board paying tuition for a pupil under this subsection shall

1 count the pupil as 1.0 pupil in membership for general aid under subch. II. The school board
2 shall pay each agency specified under s. 48.345 (12) (a) 2. to 4.5. or 938.34 (7d) (a) 2. to 4.5.,
3 for each full-time equivalent pupil served by the agency, an amount equal to at least 80% of
4 the average per pupil cost for the school district. No state aid may be paid to the technical
5 college district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34
6 (7d) (a) 4.

NOTE: Amends this provision to reflect the amendments which add s. 48.345 (12) (a) 5., above, and 938.34 (7d) (a) 5., below, which permit a court to require in a CHIPS; juvenile in need of protection or services (JIPS), or delinquency dispositional order an educational placement at a tribal school that must be paid for by the school district.

7 **SECTION 74.** 125.09 (2) (a) 2. of the statutes is amended to read:

8 125.09 (2) (a) 2. "School" means a public, school, a parochial or private school, or a
9 tribal school as defined in s. 115.001 (16) which provides an educational program for one or
10 more grades between grades 1 and 12 and which is commonly known as an elementary school,
11 middle school, junior high school, senior high school, or high school.

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

12 **SECTION 75.** 125.68 (3) of the statutes is amended to read:

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

1 to the main entrance of the premises covered by the license or permit. The prohibition in this
2 subsection does not apply to any of the following:

3 (a) Premises covered by a license or permit on June 30, 1947.

4 (b) Premises covered by a license or permit prior to the occupation of real property
5 within 300 feet thereof by any school, hospital, or church building.

6 (c) A restaurant located within 300 feet of a church or school. This paragraph applies
7 only to restaurants in which the sale of alcohol beverages accounts for less than 50% of their
8 gross receipts.

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

9 **SECTION 76.** 231.01 (4m) of the statutes is amended to read:

10 231.01 (**4m**) "Educational facility" means a facility used for education by a private
11 institution that is described in section 501 (c) (3) of the Internal Revenue Code, as defined in
12 s. 71.22 (4), that is exempt from federal taxation under section 501 (a) of the Internal Revenue
13 Code, and that satisfies any of the following:

14 (a) The institution is a postsecondary educational institution that is regionally
15 accredited.

16 (b) The institution is a private elementary or secondary school that is accredited to the
17 satisfaction of the authority.

COMMENT: This subsection is not amended but is included for informational purposes to note that certain private schools are eligible for bonding of certain building projects through the Wisconsin health and educational facilities authority (WHEFA). This typically means that money can be borrowed at a lower rate since investors in the bonds can take advantage of the fact that interest on the bonds is exempt from federal income tax. If tribes can issue bonds that are also federally tax exempt to raise money for school construction projects, the WHEFA bonding would not provide an economic advantage to tribal schools.

However, if that is not the case, is there interest in pursuing extension of the WHEFA provision to tribal schools? If so, ch. 231, stats., should be carefully reviewed to determine if its provisions could be expanded to tribal schools.

1 **SECTION 77.** 252.15 (1) (ab) and (2) (a) 7. a. of the statutes are amended to read:

2 252.15 (1) (ab) “Affected person” means an emergency medical technician; first
3 responder; fire fighter; peace officer; correctional officer; person who is employed at a secured
4 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as
5 defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p); state patrol
6 officer; jailer, keeper of a jail, or person designated with custodial authority by the jailer or
7 keeper; health care provider; employee of a health care provider; staff member of a state crime
8 laboratory; social worker; or employee of a school district, cooperative educational service
9 agency, charter school, private school, tribal school as defined in s. 115.001 (16), the
10 Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin
11 Center for the Blind and Visually Impaired.

12 (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical
13 technician; first responder; fire fighter; peace officer; correctional officer; person who is
14 employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child
15 caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
16 938.02 (15p); state patrol officer; jailer, keeper of a jail, or person designated with custodial
17 authority by the jailer or keeper, during the course of providing care or services to an
18 individual; a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail,
19 or person designated with custodial authority by the jailer or keeper, while searching or
20 arresting an individual or while controlling or transferring an individual in custody; a health
21 care provider or an employee of a health care provider, during the course of providing care

1 or treatment to an individual or handling or processing specimens of body fluids or tissues of
2 an individual; a staff member of a state crime laboratory, during the course of handling or
3 processing specimens of body fluids or tissues of an individual; social worker; or an employee
4 of a school district, cooperative educational service agency, charter school, private school,
5 tribal school as defined in s. 115.001 (16), the Wisconsin Educational Services Program for
6 the Deaf and Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired,
7 while performing employment duties involving an individual; who is significantly exposed
8 to the individual may subject the individual's blood to a test or a series of tests for the presence
9 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and may receive
10 disclosure of the results.

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

SECTION 78. 255.30 (4) of the statutes is amended to read:

11 255.30 (4) The state superintendent of public instruction shall prepare and circulate to
12 each public and private educational institution and to each tribal school as defined in s.
13 115.001 (16) in this state instructions and recommendations for implementing the eye safety
14 provisions of this section.

NOTE: Requires the state superintendent to also provide information to tribal schools about eye safety.

SECTION 79. 301.45 (1d) (c) of the statutes is amended to read:

15 301.45 (1d) (c) "Student" means a person who is enrolled on a full-time or part-time
16 basis in any public ~~or~~, private, or tribal educational institution, including a secondary school,
17 a business, trade, technical or vocational school, or an institution of higher education.
18

NOTE: Amends the definition of “student” for the purpose of the sex offender registration law to also include students at a tribal educational institution.

COMMENT: As drafted, this amendment would affect tribal colleges as well as tribal schools. Is this acceptable?

1 **SECTION 80.** 301.46 (4) (a) 1. of the statutes is amended to read:

2 301.46 (4) (a) 1. A public or private elementary or secondary school or a tribal school
3 as defined in s. 115.001 (16).

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

4 **SECTION 81.** 343.06 (1) (c) of the statutes is amended to read:

5 343.06 (1) (c) To any person under age 18 unless the person is enrolled in a school
6 program or high school equivalency program and is not a habitual truant as defined in s. 118.16
7 (1) (a), has graduated from high school or been granted a declaration of high school graduation
8 equivalency or is enrolled in a home–based private educational program, as defined in s.
9 115.001 (3g), and has satisfactorily completed a course in driver education in public schools
10 approved by the department of public instruction, or in technical colleges approved by the
11 technical college system board, or in nonpublic and private schools or tribal schools as defined
12 in s. 115.001 (16) which meet the minimum standards set by the department of public
13 instruction, or has satisfactorily completed a substantially equivalent course in driver training
14 approved by the department and given by a school licensed by the department under s. 343.61,
15 or has satisfactorily completed a substantially equivalent course in driver education or training
16 approved by another state and has attained the age of 16, except as provided in s. 343.07 (1).
17 The department shall not issue a license to any person under the age of 18 authorizing the
18 operation of “Class M” vehicles unless the person has successfully completed a basic rider
19 course approved by the department. The department may, by rule, exempt certain persons

1 from the basic rider course requirement of this paragraph. Applicants for a license under s.
2 343.08 or 343.135 are exempt from the driver education, basic rider or driver training course
3 requirement. The secretary shall prescribe rules for licensing of schools and instructors to
4 qualify under this paragraph. The driver education course shall be made available to every
5 eligible student in the state. Except as provided under s. 343.16 (1) (c) and (2) (cm) to (e), no
6 operator's license may be issued unless a driver's examination has been administered by the
7 department.

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

8 **SECTION 82.** 343.07 (5) of the statutes is amended to read:

9 343.07 (5) DEFINITION. In this section, "qualified instructor" means a person employed
10 by a public or private school or by a tribal school as defined in s. 115.001 (16), holding an
11 operator's license and meeting the teaching certification standards of the department of public
12 instruction or the technical college system board to teach driver education, or an instructor of
13 a school licensed under s. 343.61, or a teacher or student teacher in a driver education course
14 for teachers conducted by an institution of higher education.

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

15 **SECTION 83.** 343.16 (1) (c) 3. of the statutes is amended to read:

16 343.16 (1) (c) 3. A course in driver education in nonpublic and private schools or tribal
17 schools as defined in s. 115.001 (16) that meets the minimum standards set by the department
18 of public instruction.

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

SECTION 84. 447.06 (2) (a) 2. of the statutes is amended to read:

447.06 (2) (a) 2. For a school board or a governing body of a private school or of a tribal school as defined in s. 115.001 (16).

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

SECTION 85. 938.34 (7d) of the statutes is amended to read:

938.34 (7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the juvenile resides.

2. Pursuant to a contractual agreement with the school district in which the juvenile resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the juvenile resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the juvenile resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the juvenile resides, an educational program provided by a technical college district located in the school district in which the juvenile resides.

5. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a tribal school as defined in s. 115.001 (16).

1 (b) The court shall order the school board to disclose the juvenile's pupil records, as
2 defined under s. 118.125 (1) (d), to the county department or licensed child welfare agency
3 responsible for supervising the juvenile, as necessary to determine the juvenile's compliance
4 with the order under par. (a).

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

10 (d) This subsection does not apply to a juvenile who is a child with a disability, as
11 defined under s. 115.76 (5).

NOTE: Under current law, a delinquency dispositional order, JIPS dispositional order, or a habitual truancy ordinance violation dispositional order may include an order that a juvenile attend an educational program provided by the school district or one of several programs under contract with the school district. Current law does not include a tribal school.

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

12 **SECTION 86.** 938.34 (14t) of the statutes is amended to read:

13 938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
14 ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a
15 violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance
16 included in schedule I or II under ch. 961, a controlled substance analog of a controlled
17 substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or

1 on the premises of a scattered-site public housing project, as defined in s. 961.01 (20i), while
2 in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or
3 correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as
4 defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center,
5 as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000
6 feet of any private or public school premises or of any premises of a tribal school as defined
7 in s. 115.001 (16) or while in or on or otherwise within 1,000 feet of a school bus, as defined
8 in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a
9 supervised work program or other community service work under sub. (5g).

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

10 **SECTION 87.** 938.342 (1r) of the statutes is amended to read:

11 938.342 (1r) If school attendance under sub. (1d) (a) or (1g) (g) is a condition of an order
12 under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and
13 shall direct the school board of the school district, or the governing body of the private school,
14 in which the person is enrolled to notify the court or, if the person is under the supervision of
15 an agency under sub. (1g) (j), the agency that is responsible for supervising the person within
16 5 days after any violation of the condition by the person.

COMMENT: This subsection is not amended but is included for informational purposes. Under s. 938.342 (1d) (a) and (1g) (g), stats., a court that determined that a juvenile violated a school truancy or habitual truancy ordinance may order the juvenile to attend school. If school attendance is required, s. 938.342 (1r) requires the court to order the

school board or the governing body of a private school to notify the court within 5 days of a violation of this condition.

Does the working group wish to permit a court to order a tribal school to do the same? If so, it is not clear that such an order could be enforced if the tribal school does not comply. An alternative may be to permit a court to request that a tribal school do so. What course, if any, does the working group wish to take? Also see ss. 48.355 (2) (c), above, and 938.355 (2) (c), below.

1 **SECTION 88.** 938.355 (2) (c) of the statutes is amended to read:

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

COMMENT: This paragraph is not amended but is included for informational purposes. Under s. 938.355 (2) (b) 7., stats., a delinquency or JIPS dispositional order may state the conditions with which the juvenile must comply. If school attendance is a condition, s. 938.355 (2) (c) requires that the order direct the school board or the governing body of a private school to notify the court within 5 days of a violation of this condition.

Does the working group wish to permit a court to order a tribal school to do the same? If so, it is not clear that such an order could be enforced if the tribal school does not comply. An alternative may be to permit a court to request that a tribal school do so. What course, if any, does the working group wish to take? Also see ss. 48.355 (2) (c) and 938.342 (1r), above.

7 **SECTION 89.** 938.396 of the statutes is amended to read:

8 **938.396 Records.** (1) Law enforcement officers' records of juveniles shall be kept
9 separate from records of adults. Law enforcement officers' records of juveniles shall not be
10 open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r),
11 (1t), (1x), or (5) or s. 938.293 or by order of the court. This subsection does not apply to

1 representatives of the news media who wish to obtain information for the purpose of reporting
2 news without revealing the identity of the juvenile involved, to the confidential exchange of
3 information between the police and officials of the school attended by the juvenile or other
4 law enforcement or social welfare agencies or to juveniles 10 years of age or older who are
5 subject to the jurisdiction of the court of criminal jurisdiction. A public school official who
6 obtains information under this subsection shall keep the information confidential as required
7 under s. 118.125 and a private school official or an official of a tribal school as defined in s.
8 115.001 (16) who obtains information under this subsection shall keep the information
9 confidential in the same manner as is required of a public school official under s. 118.125.
10 A law enforcement agency that obtains information under this subsection shall keep the
11 information confidential as required under this subsection and s. 48.396 (1). A social welfare
12 agency that obtains information under this subsection shall keep the information confidential
13 as required under ss. 48.78 and 938.78.

14 **(1b)** If requested by the parent, guardian or legal custodian of a juvenile who is the
15 subject of a law enforcement officer's report, or if requested by the juvenile, if 14 years of age
16 or over, a law enforcement agency may, subject to official agency policy, provide to the parent,
17 guardian, legal custodian or juvenile a copy of that report.

18 **(1d)** Upon the written permission of the parent, guardian or legal custodian of a juvenile
19 who is the subject of a law enforcement officer's report or upon the written permission of the
20 juvenile, if 14 years of age or over, a law enforcement agency may, subject to official agency
21 policy, make available to the person named in the permission any reports specifically
22 identified by the parent, guardian, legal custodian or juvenile in the written permission.

23 **(1g)** If requested by the victim-witness coordinator, a law enforcement agency shall
24 disclose to the victim-witness coordinator any information in its records relating to the

1 enforcement of rights under the constitution, this chapter and s. 950.04 or the provision of
2 services under s. 950.06 (1m). The victim-witness coordinator may use the information only
3 for the purpose of enforcing those rights and providing those services and may make that
4 information available only as necessary to ensure that victims and witnesses of crimes, as
5 defined in s. 950.02 (1m), receive the rights and services to which they are entitled under the
6 constitution, this chapter and ch. 950.

7 **(1m)** (a) A law enforcement agency, on its own initiative or on the request of the school
8 district administrator of a public school district, the administrator of a private school, or the
9 administrator of a tribal school as defined in s. 115.001 (16) or the designee of the school
10 district administrator ~~or the~~, private school administrator, or tribal school administrator may,
11 subject to official agency policy, provide to the school district administrator, private school
12 administrator, or tribal school administrator or designee any information in its records relating
13 to the use, possession, or distribution of alcohol or a controlled substance or controlled
14 substance analog by a juvenile enrolled in the public school district ~~or~~, private school, or tribal
15 school. The information shall be used by the school district ~~or~~, private school, or tribal school
16 as provided under s. 118.127 (2).

17 (am) A law enforcement agency, on its own initiative or on the request of the school
18 district administrator of a public school district, the administrator of a private school, or the
19 administrator of a tribal school as defined in s. 115.001 (16) or the designee of the school
20 district administrator ~~or the~~, private school administrator, or tribal school administrator, may,
21 subject to official agency policy, provide to the school district administrator, private school
22 administrator, or tribal school administrator or designee any information in its records relating
23 to the illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).

1 The information shall be used by the school district ~~or~~, private school, or private school as
2 provided in s. 118.127 (2).

3 (ar) A law enforcement agency, on its own initiative or on the request of the school
4 district administrator of a public school district, the administrator of a private school, or the
5 administrator of a tribal school as defined in s. 115.001 (16), or the designee of the school
6 district administrator ~~or the~~, private school, or tribal school administrator, may, subject to
7 official agency policy, provide to the school district administrator, private school
8 administrator, or tribal school administrator, or designee any information in its records
9 relating to an act for which a juvenile enrolled in the school district ~~or~~, private school, or tribal
10 school was taken into custody under s. 938.19 based on a law enforcement officer's belief that
11 the juvenile was committing or had committed a violation of any state or federal criminal law.
12 The information shall be used by the school district ~~or~~, private school, or tribal school as
13 provided in s. 118.127 (2).

14 (b) A law enforcement agency, on its own initiative or on the request of the school
15 district administrator of a public school district, the administrator of a private school, or the
16 administrator of a tribal school as defined in s. 115.001 (16) or the designee of the school
17 district administrator ~~or the~~, private school administrator, or tribal school administrator, may,
18 subject to official agency policy, provide to the school district administrator, private school
19 administrator, tribal school administrator, or designee any information in its records relating
20 to the act for which a juvenile enrolled in the public school district ~~or~~, private school, or tribal
21 school was adjudged delinquent. The information shall be used by the school district ~~or~~,
22 private school, or tribal school as provided in s. 118.127 (2).

23 (c) On petition of a law enforcement agency to review pupil records, as defined in s.
24 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s.

1 118.125 (2) or (2m), for the purpose of investigating alleged delinquent or criminal activity,
2 the court may order the school board of the school district, ~~or the governing body of the private~~
3 school, or the governing body of the tribal school in which a juvenile is enrolled to disclose
4 to the law enforcement agency the pupil records of that juvenile as necessary for the law
5 enforcement agency to pursue its investigation. The law enforcement agency may use the
6 pupil records only for the purpose of its investigation and may make the pupil records
7 available only to employees of the law enforcement agency who are working on the
8 investigation.

9 (d) On petition of a fire investigator under s. 165.55 (15) to review pupil records, as
10 defined in s. 118.125 (1) (d), other than pupils records that may be disclosed without a court
11 order under s. 118.125 (2) or (2m), for the purpose of an investigation under s. 165.55, the court
12 may order the school board of the school district in which a juvenile is enrolled to disclose to
13 the fire investigator the pupil records of that juvenile as necessary for the fire investigator to
14 pursue his or her investigation. The fire investigator may use the pupil records only for the
15 purpose of pursuing his or her investigation and may make the pupil records available only
16 to employees of the fire investigator who are working on the investigation.

17 **(1p)** A law enforcement agency may enter into an interagency agreement with a school
18 board, a private school, a tribal school as defined in s. 115.001 (16), a social welfare agency,
19 or another law enforcement agency providing for the routine disclosure of information under
20 subs. (1) and (1m) to the school board, private school, tribal school, social welfare agency, or
21 other law enforcement agency.

22 **(1r)** If requested by a victim of a juvenile's act, a law enforcement agency may, subject
23 to official agency policy, disclose to the victim any information in its records relating to the
24 injury, loss or damage suffered by the victim, including the name and address of the juvenile

1 and the juvenile's parents. The victim may use and further disclose the information only for
2 the purpose of recovering for the injury, damage or loss suffered as a result of the juvenile's
3 act.

4 (1t) If a juvenile has been ordered to make restitution for any injury, loss or damage
5 caused by the juvenile and if the juvenile has failed to make that restitution within one year
6 after the entry of the order, the insurer of the victim, as defined in s. 938.02 (20m) (a) 1., may
7 request a law enforcement agency to disclose to the insurer any information in its records
8 relating to the injury, loss or damage suffered by the victim, including the name and address
9 of the juvenile and the juvenile's parents, and the law enforcement agency may, subject to
10 official agency policy, disclose to the victim's insurer that information. The insurer may use
11 and further disclose the information only for the purpose of investigating a claim arising out
12 of the juvenile's act.

13 (1x) If requested by a fire investigator under s. 165.55 (15), a law enforcement agency
14 may, subject to official agency policy, disclose to the fire investigator any information in its
15 records relating to a juvenile as necessary for the fire investigator to pursue his or her
16 investigation under s. 165.55. The fire investigator may use and further disclose the
17 information only for the purpose of pursuing that investigation.

18 (2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch.
19 48 and of municipal courts exercising jurisdiction under s. 938.17 (2) shall be entered in books
20 or deposited in files kept for that purpose only. Those records shall not be open to inspection
21 or their contents disclosed except by order of the court assigned to exercise jurisdiction under
22 this chapter and ch. 48 or as permitted under this section.

23 (ag) Upon request of the parent, guardian, or legal custodian of a juvenile who is the
24 subject of a record of a court assigned to exercise jurisdiction under this chapter and ch. 48

1 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon request of the
2 juvenile, if 14 years of age or over, the court that is the custodian of the record shall open for
3 inspection by the parent, guardian, legal custodian, or juvenile its records relating to that
4 juvenile, unless that court finds, after due notice and hearing, that inspection of those records
5 by the parent, guardian, legal custodian, or juvenile would result in imminent danger to
6 anyone.

7 (am) Upon the written permission of the parent, guardian, or legal custodian of a
8 juvenile who is the subject of a record of a court assigned to exercise jurisdiction under this
9 chapter and ch. 48 or of a municipal court exercising jurisdiction under s. 938.17 (2), or upon
10 written permission of the juvenile if 14 years of age or over, the court that is the custodian of
11 the record shall open for inspection by the person named in the permission any records
12 specifically identified by the parent, guardian, legal custodian, or juvenile in the written
13 permission, unless e that court finds, after due notice and hearing, that inspection of those
14 records by the person named in the permission would result in imminent danger to anyone.

15 (b) Upon request of the department of health and family services, the department of
16 corrections or a federal agency to review court records for the purpose of monitoring and
17 conducting periodic evaluations of activities as required by and implemented under 45 CFR
18 1355, 1356 and 1357, the court shall open those records for inspection by authorized
19 representatives of the department or federal agency.

20 (c) Upon request of a law enforcement agency to review court records for the purpose
21 of investigating a crime that might constitute criminal gang activity, as defined in s. 941.38
22 (1) (b), the court shall open for inspection by authorized representatives of the law
23 enforcement agency the records of the court relating to any juvenile who has been found to
24 have committed a delinquent act at the request of or for the benefit of a criminal gang, as

1 defined in s. 939.22 (9), that would have been a felony under chs. 939 to 948 or 961 if
2 committed by an adult.

3 (d) Upon request of a court of criminal jurisdiction or a district attorney to review court
4 records for the purpose of setting bail under ch. 969, impeaching a witness under s. 906.09,
5 or investigating and determining whether a person has possessed a firearm in violation of s.
6 941.29 (2) or body armor in violation of s. 941.291 (2) or upon request of a court of civil
7 jurisdiction or the attorney for a party to a proceeding in that court to review court records for
8 the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction
9 under this chapter and ch. 48 shall open for inspection by authorized representatives of the
10 requester the records of the court relating to any juvenile who has been the subject of a
11 proceeding under this chapter.

12 (dm) Upon request of a defense counsel to review court records for the purpose of
13 preparing his or her client's defense to an allegation of delinquent or criminal activity, the court
14 shall open for inspection by authorized representatives of the requester the records of the court
15 relating to that client.

16 (dr) Upon request of the department of corrections or any other person preparing a
17 presentence investigation under s. 972.15 to review court records for the purpose of preparing
18 the presentence investigation, the court shall open for inspection by any authorized
19 representative of the requester the records of the court relating to any juvenile who has been
20 the subject of a proceeding under this chapter.

21 (e) Upon request of the department of corrections to review court records for the
22 purpose of providing, under s. 980.015 (3) (a), the department of justice or a district attorney
23 with a person's offense history, the court shall open for inspection by authorized
24 representatives of the department of corrections the records of the court relating to any

1 juvenile who has been adjudicated delinquent for a sexually violent offense, as defined in s.
2 980.01 (6).

3 (em) Upon request of the department to review court records for the purpose of
4 obtaining information concerning a child required to register under s. 301.45, the court shall
5 open for inspection by authorized representatives of the department the records of the court
6 relating to any child who has been adjudicated delinquent or found not responsible by reason
7 of mental disease or defect for an offense specified in s. 301.45 (1g) (a). The department may
8 disclose information that it obtains under this paragraph as provided under s. 301.46.

9 (f) Upon request of the victim-witness coordinator to review court records for the
10 purpose of enforcing rights under the constitution, this chapter and s. 950.04 and providing
11 services under s. 950.06 (1m), the court shall open for inspection by the victim-witness
12 coordinator the records of the court relating to the enforcement of those rights or the provision
13 of those services. The victim-witness coordinator may use any information obtained under
14 this paragraph only for the purpose of enforcing those rights and providing those services and
15 may make that information available only as necessary to ensure that victims and witnesses
16 of crimes, as defined in s. 950.02 (1m), receive the rights and services to which they are
17 entitled under the constitution, this chapter and ch. 950.

18 (fm) Upon request of an insurer of the victim, as defined in s. 938.02 (20m) (a) 1., the
19 court shall disclose to an authorized representative of the requester the amount of restitution,
20 if any, that the court has ordered a juvenile to make to the victim.

21 (g) Upon request of a court having jurisdiction over actions affecting the family, an
22 attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity
23 proceeding under ss. 767.45 to 767.60, the party's attorney or the guardian ad litem for the
24 juvenile who is the subject of that proceeding to review or be provided with information from

1 the records of the court assigned to exercise jurisdiction under this chapter and ch. 48 relating
2 to the paternity of a juvenile for the purpose of determining the paternity of the juvenile or for
3 the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41, the court
4 assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by the
5 requester its records relating to the paternity of the juvenile or disclose to the requester those
6 records.

7 (gm) Upon request of any court assigned to exercise jurisdiction under this chapter and
8 ch. 48, any municipal court exercising jurisdiction under s. 938.17 (2), or a district attorney,
9 corporation counsel, or city, village, or town attorney to review court records for the purpose
10 of any proceeding in that court or upon request of the attorney or guardian ad litem for a party
11 to a proceeding in that court to review court records for the purpose of that proceeding, the
12 court assigned to exercise jurisdiction under this chapter and ch. 48 or the municipal court
13 exercising jurisdiction under s. 938.17 (2) shall open for inspection by any authorized
14 representative of the requester its records relating to any juvenile who has been the subject of
15 a proceeding under this chapter.

16 (h) Upon request of the court having jurisdiction over an action affecting the family or
17 of an attorney for a party or a guardian ad litem in an action affecting the family to review court
18 records for the purpose of considering the custody of a juvenile, the court assigned to exercise
19 jurisdiction under this chapter and ch. 48 or a municipal court exercising jurisdiction under
20 s. 938.17 (2) shall open for inspection by an authorized representative of the requester its
21 records relating to any juvenile who has been the subject of a proceeding under this chapter.

22 (i) Upon request of the court assigned to exercise probate jurisdiction, the attorney
23 general, the personal representative or special administrator of, or an attorney performing
24 services for, the estate of a decedent in any proceeding under chs. 851 to 879, a person

1 interested, as defined in s. 851.21, or an attorney, attorney-in-fact, guardian ad litem or
2 guardian of the estate of a person interested to review court records for the purpose of s. 854.14
3 (5) (b), the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for
4 inspection by any authorized representative of the requester the records of the court relating
5 to any juvenile who has been adjudged delinquent on the basis of unlawfully and intentionally
6 killing a person.

7 (j) Upon request of a fire investigator under s. 165.55 (15) to review court records for
8 the purpose of pursuing an investigation under s. 165.55, the court shall open for inspection
9 by authorized representatives of the requester the records of the court relating to any juvenile
10 who has been adjudicated delinquent or found to be in need of protection or services under
11 s. 938.13 (12) or (14) for a violation of s. 940.08, 940.24, 941.10, 941.11, 943.01, 943.012,
12 943.013, 943.02, 943.03, 943.04, 943.05, 943.06 or for an attempt to commit any of those
13 violations.

14 **(2m)** (a) Notwithstanding sub. (2), upon request, a court shall open for inspection by
15 the requester the records of the court, other than reports under s. 938.295 or 938.33 or other
16 records that deal with sensitive personal information of the juvenile and the juvenile's family,
17 relating to a juvenile who has been alleged to be delinquent for committing a violation
18 specified in s. 938.34 (4h) (a). The requester may further disclose the information to anyone.

19 (b) Notwithstanding sub. (2), upon request, a court shall open for inspection by the
20 requester the records of the court, other than reports under s. 938.295 or 938.33 or other
21 records that deal with sensitive personal information of the juvenile and the juvenile's family,
22 relating to a juvenile who has been alleged to be delinquent for committing a violation that
23 would be a felony if committed by an adult if the juvenile has been adjudicated delinquent at

1 any time preceding the present proceeding and that previous adjudication remains of record
2 and unreversed. The requester may further disclose the information to anyone.

3 (3) This section does not apply to proceedings for violations of chs. 340 to 349 and 351
4 or any county or municipal ordinance enacted under ch. 349, except that this section does
5 apply to proceedings for violations of ss. 342.06 (2) and 344.48 (1), and ss. 30.67 (1) and
6 346.67 (1) when death or injury occurs.

7 (4) When a court assigned to exercise jurisdiction under this chapter and ch. 48 or a
8 municipal court exercising jurisdiction under s. 938.17 (2) revokes, suspends, or restricts a
9 juvenile's operating privilege under this chapter, the department of transportation may not
10 disclose information concerning or relating to the revocation, suspension, or restriction to any
11 person other than a court assigned to exercise jurisdiction under this chapter and ch. 48, a
12 municipal court exercising jurisdiction under s. 938.17 (2), a district attorney, county
13 corporation counsel, or city, village, or town attorney, a law enforcement agency, the juvenile
14 whose operating privilege is revoked, suspended, or restricted, or the juvenile's parent or
15 guardian. Persons entitled to receive this information may not disclose the information to
16 other persons or agencies.

17 (5) (a) Any person who is denied access to a record under sub. (1), (1b), (1d), (1g), (1m),
18 (1r) or (1t) may petition the court to order the disclosure of the records governed by the
19 applicable subsection. The petition shall be in writing and shall describe as specifically as
20 possible all of the following:

- 21 1. The type of information sought.
- 22 2. The reason the information is being sought.
- 23 3. The basis for the petitioner's belief that the information is contained in the records.

1 4. The relevance of the information sought to the petitioner's reason for seeking the
2 information.

3 5. The petitioner's efforts to obtain the information from other sources.

4 (b) If the petitioner is seeking access to a record under sub. (1), (1b), (1d), (1g), (1m)
5 (c) or (d), (1r), or (1t), the court shall notify the juvenile, the juvenile's counsel, the juvenile's
6 parents, and appropriate law enforcement agencies in writing of the petition. If any person
7 notified objects to the disclosure, the court may hold a hearing to take evidence relating to the
8 petitioner's need for the disclosure.

9 (bm) If the petitioner is seeking access to a record under sub. (1m) (a), (am), (ar), or (b),
10 the court shall, without notice or hearing, make the inspection and determinations specified
11 in par. (c) and, if the court determines that disclosure is warranted, shall order disclosure under
12 par. (d). The petitioner shall provide a copy of the disclosure order to the law enforcement
13 agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's
14 parents. Any of those persons may obtain a hearing on the court's determinations by filing
15 a motion to set aside the disclosure order within 10 days after receipt of the order. If no motion
16 is filed within those 10 days or if, after hearing, the court determines that no good cause has
17 been shown for setting aside the order, the law enforcement agency shall disclose the
18 juvenile's record as ordered.

19 (c) The court shall make an inspection, which may be in camera, of the juvenile's
20 records. If the court determines that the information sought is for good cause and that it cannot
21 be obtained with reasonable effort from other sources, it shall then determine whether the
22 petitioner's need for the information outweighs society's interest in protecting its
23 confidentiality. In making this determination, the court shall balance the following private and
24 societal interests:

1 1. The petitioner's interest in recovering for the injury, damage or loss he or she has
2 suffered against the juvenile's interest in rehabilitation and in avoiding the stigma that might
3 result from disclosure.

4 2. The public's interest in the redress of private wrongs through private litigation against
5 the public's interest in protecting the integrity of the juvenile justice system.

6 3. If the petitioner is a person who was denied access to a record under sub. (1m) (a),
7 (am), (ar), or (b), the petitioner's legitimate educational interests, including safety interests,
8 in the information against society's interest in protecting its confidentiality.

9 (d) If the court determines that disclosure is warranted, it shall order the disclosure of
10 only as much information as is necessary to meet the petitioner's need for the information.

11 (e) The court shall record the reasons for its decision to disclose or not to disclose the
12 juvenile's records. All records related to a decision under this subsection are confidential.

13 (6) The victim-witness coordinator may disclose to a victim of a juvenile's act or
14 alleged act the name and address of the juvenile and the juvenile's parents.

15 (7) (a) Notwithstanding sub. (2) (a), if a petition under s. 938.12 or 938.13 (12) is filed
16 alleging that a juvenile has committed a delinquent act that would be a felony if committed
17 by an adult, the court clerk shall notify the school board of the school district, ~~or~~ the governing
18 body of the private school, or the governing body of the tribal school in which the juvenile is
19 enrolled or the designee of the school board or governing body of the fact that the petition has
20 been filed and the nature of the delinquent act alleged in the petition. Notwithstanding sub.
21 (2) (a), if later the proceeding on the petition is closed, dismissed, ~~or~~ otherwise terminated
22 without a finding that the juvenile has committed a delinquent act, the court clerk shall notify
23 the school board of the school district or the governing body of the private school or tribal
24 school in which the juvenile is enrolled or the school board's or governing body's designee

1 that the proceeding has been terminated without a finding that the juvenile has committed a
2 delinquent act.

3 (am) Notwithstanding sub. (2) (a) and subject to par. (b), if a juvenile is adjudged
4 delinquent, within 5 days after the date on which the dispositional order is entered, the court
5 clerk shall notify the school board of the school district, ~~or the governing body of the private~~
6 school, or the governing body of the tribal school in which the juvenile is enrolled or the
7 designee of the school board or governing body of the fact that the juvenile has been
8 adjudicated delinquent, the nature of the violation committed by the juvenile, and the
9 disposition imposed on the juvenile under s. 938.34 as a result of the violation.

10 (ar) Notwithstanding sub. (2) (a), if school attendance is a condition of a dispositional
11 order under s. 938.342 (1d) or (1g) or 938.355 (2) (b) 7., within 5 days after the date on which
12 the dispositional order is entered, the clerk of the court assigned to exercise jurisdiction under
13 this chapter and ch. 48 or the clerk of the municipal court exercising jurisdiction under s.
14 938.17 (2) shall notify the school board of the school district, ~~or the governing body of the~~
15 private school, or the governing body of the tribal school in which the juvenile is enrolled or
16 the designee of the school board or governing body of the fact that the juvenile's school
17 attendance is a condition of a dispositional order.

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

1 on that basis, the nature of the violation committed by the juvenile and the disposition imposed
2 on the juvenile under s. 938.34 as a result of that violation.

3 (bm) Notwithstanding sub. (2) (a), in addition to the disclosure made under par. (am)
4 or (b), if a juvenile is adjudicated delinquent and as a result of the dispositional order is
5 enrolled in a different school district ~~or~~, private school, or tribal school from the school district
6 ~~or~~, private school, or tribal school in which the juvenile is enrolled at the time of the
7 dispositional order, the court clerk, within 5 days after the date on which the dispositional
8 order is entered, shall provide the school board of the juvenile's new school district, the
9 governing body of the juvenile's new private school or tribal school, or the designee of the
10 school board or governing body with the information specified in par. (am) or (b), whichever
11 is applicable, and, in addition, shall notify that school board, governing body, or designee of
12 whether the juvenile has been adjudicated delinquent previously by that court, the nature of
13 any previous violations committed by the juvenile and the dispositions imposed on the
14 juvenile under s. 938.34 as a result of those previous violations.

COMMENT: Also see s. 938.34 (7d), above.

15 (c) No information from the juvenile's court records, other than information disclosed
16 under par. (a), (am), (ar), (b), or (bm), may be disclosed to the school board of the school
17 district, ~~or~~ the governing body of the private school, or the governing body of a tribal school
18 in which the juvenile is enrolled or the designee of the school board or governing body except
19 by order of the court. Any information provided under this subsection to the school board of
20 the school district, ~~or~~ the governing body of the private school, or the governing body of the
21 tribal school in which the juvenile is enrolled or the designee of the school board or governing
22 body shall be disclosed by the school board, governing body, or designee to employees of the
23 school district ~~or~~, private school, or tribal school who work directly with the juvenile or who

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

16 (8) Notwithstanding sub. (2), if a juvenile is adjudged delinquent for an act that would
17 be a felony if committed by an adult, the court clerk shall notify the department of justice of
18 that fact. No other information from the juvenile's court records may be disclosed to the
19 department of justice except by order of the court. The department of justice may disclose any
20 information provided under this subsection only as part of a firearms restrictions record search
21 under s. 175.35 (2g) (c).

22 (9) Notwithstanding sub. (2) (a), if a juvenile is adjudged delinquent for committing a
23 serious crime, as defined in s. 48.685 (1) (c), the court clerk shall notify the department of
24 justice of that fact. No other information from the juvenile's court records may be disclosed

1 to the department of justice except by order of the court. The department of justice may
2 disclose any information provided under this subsection only as part of a criminal history
3 record search under s. 48.685 (2) (am) 1. or (b) 1. a.

NOTE: Current law relating to the confidentiality of court and law enforcement records relating to juveniles alleged or adjudicated to be delinquent or JIPS are set forth in s. 938.396. This draft amends the provisions relating to disclosure to private schools to also refer to tribal schools and imposes on tribal schools the same conditions on the use or redisclosure of the information that apply to private schools. While only certain parts of s. 938.396 are amended (and only those parts will be included in the final draft), all of s. 938.396, stats., is reproduced for background information. Also see ss. 48.396 (1) and 118.127, above.

COMMENT: It is not clear that the provisions that require a tribal school or tribal school official to disclose or refrain from disclosing information as provided in this amended section could be enforced if the tribe or tribal official raised a defense of sovereign immunity for violating such a provision. Does the working group wish to provide for disclosure to a tribal school or tribal school official on the condition that the tribe waives its sovereign immunity with respect to enforcement of this provision? Are the provisions in sub. (7) (c) relating to immunity from liability appropriate?

4 **SECTION 90.** 938.78 (2) (b) of the statutes is amended to read:

5 938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of
6 information between an agency and another social welfare agency, a law enforcement agency,
7 the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school district
8 ~~or, a private school,~~ or a tribal school as defined in s. 115.001 (16) regarding an individual in
9 the care or legal custody of the agency. A social welfare agency that obtains information under
10 this paragraph shall keep the information confidential as required under this section and s.
11 48.78. A law enforcement agency that obtains information under this paragraph shall keep
12 the information confidential as required under ss. 48.396 (1) and 938.396 (1). A public school
13 that obtains information under this paragraph shall keep the information confidential as
14 required under s. 118.125, ~~and a private school~~ or tribal school that obtains information under

1 this paragraph shall keep the information confidential in the same manner as is required of a
2 public school under s. 118.125.

3 1m. An agency may enter into an interagency agreement with a school board, a private
4 school, a tribal school, a law enforcement agency, or another social welfare agency providing
5 for the routine disclosure of information under subd. 1. to the school board, private school,
6 tribal school, law enforcement agency, or other social welfare agency.

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

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

This amendment permits the confidential exchange of information with a tribal school and requires the tribal school to keep the information confidential in same manner required of public and private schools. This amendment also permits interagency agreements for the disclosure of information to include tribal schools and permits the court to order a tribal school to disclose information necessary to provide care and treatment.

COMMENT: It is not clear that the provisions that require a tribal school or tribal school official to disclose or refrain from disclosing information as provided in this amended section could be enforced if the tribe or tribal official raised a defense of sovereign immunity for violating such a provision. Does the working group wish to provide for disclosure to a tribal school or tribal school official on the condition that the tribe waives its sovereign immunity with respect to enforcement of this provision? Is it appropriate to authorize a court to order that a tribal school disclose information?

1 **SECTION 91.** 939.632 (1) (a) and (d) 3. of the statutes are amended to read:

2 939.632 **(1)** (a) “School” means a public, parochial or private school, or a tribal school
3 as defined in s. 115.001 (16) that provides an educational program for one or more grades
4 between grades 1 and 12 and that is commonly known as an elementary school, middle school,
5 junior high school, senior high school, or high school.

6 (d) 3. On a school bus or public transportation transporting students to and from a public
7 or private school or to or from a tribal school as defined in s. 115.001 (16).

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

8 **SECTION 92.** 944.21 (8) (b) 2. of the statutes is amended to read:

9 944.21 **(8)** (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as
10 defined in s. 115.001 (16).

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

11 **SECTION 93.** 948.095 (1) (a) of the statutes is amended to read:

12 948.095 **(1)** (a) “School” means a public or private elementary or secondary school or
13 a tribal school as defined in s. 115.001 (16).

NOTE: Current statutes provide that it is a Class H felony for school staff at a public or private school to have sexual contact or sexual intercourse with a child who is age 16 or older. (If school staff are not involved, it is a class A misdemeanor to have sexual intercourse with a child age 16 or older.) This provision adds tribal schools to the definition of “school” for this purpose.

1 **SECTION 94.** 948.11 (4) (b) 2. of the statutes is amended to read:

2 948.11 (4) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as
3 defined in s. 115.001 (16).

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

4 **SECTION 95.** 948.50 (2) (a) of the statutes is amended to read:

5 948.50 (2) (a) “School” means a public school, a parochial or private school, or a tribal
6 school as defined in s. 115.001 (16) which provides an educational program for one or more
7 grades between kindergarten and grade 12 and which is commonly known as a kindergarten,
8 elementary school, middle school, junior high school, senior high school, or high school.

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

9 **SECTION 96.** 948.61 (1) (b) of the statutes is amended to read:

10 948.61 (1) (b) “School” means a public school, a parochial or private school, or a tribal
11 school as defined in s. 115.001 (16) which provides an educational program for one or more
12 grades between grades 1 and 12 and which is commonly known as an elementary school,
13 middle school, junior high school, senior high school, or high school.

NOTE: Current law in s. 948.61, stats., provides a criminal penalty for possessing certain dangerous weapons other than firearms on school premises. Current law in s. 948.605, stats., prohibits possession of a

firearm in or on the grounds of a school or within 1,000 feet of a school (school zone) and provides certain criminal penalties under certain circumstances for the discharge of a firearm in a school zone. This amendment adds tribal schools to the definition of “school” for both of these statutes since s. 948.605 cross-references the definition in s. 948.61. Under s. 938.34 (14q), stats., additional consequences for a delinquency disposition also may apply for firearms violation on school premises. Under s. 973.135, stats., information about a conviction must be forwarded to DOT.

1 **SECTION 97.** 961.49 (2) (f) of the statutes is amended to read:

2 961.49 (2) (f) Any private or public school premises and any premises of a tribal school
3 as defined in s. 115.001 (16).

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

4 **SECTION 98.** 961.495 of the statutes is amended to read:

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

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

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

(END)