

1 **AN ACT** *to amend* 6.28 (2) (c), 7.30 (2) (am), 15.377 (4) (f), 15.57 (3), 16.971 (15),
2 16.972 (2) (b), 16.974 (2) and (3), 16.9785, 16.99 (2g), 20.255 (2) (cn), 20.505 (1)
3 (is), 27.01 (7) (c) 10., 28.06 (1), 29.301 (1) (a), 30.74 (1) (a), 36.11 (36m), 38.001
4 (3) (a), 38.04 (27), 38.14 (3) (a) and (bm), 39.41 (1) (bm) and (1m) (a), (b), (c) 4., 5.,
5 (e), (em), (g), and (j), 45.396 (2), 46.275 (3r) (a) 3., 48.345 (12), 48.355 (2) (c),
6 48.396 (1), 48.65 (2) (b), 48.78 (2) (b), 49.26 (1) (g) 2., 51.45 (4) (d), 103.23 (2)
7 (intro.), (a), (3m) (c) and (5), 103.25 (3m) (c) and (5), 103.27 (3), 103.275 (8),
8 103.67 (2) (c), 103.71 (1) (b), 115.28 (7) (b) and (e) 1. and (11) (intro.), 115.34 (2),
9 115.341 (1) and (2), 115.343 (1), 115.345 (7m), 115.36 (1), (2) (a), (b) and (d) 3.,
10 115.365 (1), (2) (a) and (b), 115.368 (1), (2) (a) and (b), 115.42 (1) (a) 2. and (2) (a)
11 2., 115.52 (3) (b) 1., 2. and 10., 115.525 (3) (b) 2., 116.01, 116.032 (1) and (3) (a),
12 118.025, 118.08 (1), 118.125 (2) (n), 118.125 (4), 118.127 (2), 118.145 (3) and (4),
13 118.15 (1) (d) 4., 118.15 (4), 118.153 (1) (b), 118.255 (2) (a), (b) and (c), 118.257 (1)
14 (d), 118.29, 118.295, 120.18 (1) (a) 2. and (s), 121.05 (1) (a) 7., 121.76 (1) (a),
15 121.76 (2) (a), 121.76 (2) (c), 121.78 (4), 125.09 (2) (a) 2., 125.68 (3), 252.15 (1)
16 (ab) and (2) (a) 7. a., 255.30 (4), 301.45 (1d) (c), 301.46 (4) (a) 1., 343.06 (1) (c),
17 343.07 (5), 343.16 (1) (c) 3., 447.06 (2) (a) 2., 895.48 (1m), 895.515 (2), 938.34
18 (7d), 938.34 (14t), 938.342 (1r), 938.355 (2) (c), 938.396 (1), (1m), (1p), and (7),
19 938.78 (2) (b), 939.632 (1) (a) and (d) 3., 944.21 (8) (b) 2., 948.095 (1) (a), 948.11
20 (4) (b) 2., 948.50 (2) (a), 948.61 (1) (b), 961.49 (2) (f) and 961.495; **to repeal and**
21 **recreate** 121.76 (2) (c) and 121.78 (4); and **to create** 15.377 (8) (c) 14., 16.972 (1)
22 (cm), 38.01 (9m), 39.41 (1) (c), 48.01 (18m), 49.26 (1) (a) 2. bm., 103.21 (7), 103.64

1 (6), 115.001 (16), 118.16 (2) (em) and 118.162 (1) (am) and (m) of the statutes;
2 **relating to:** providing benefits to tribal schools and tribal school pupils similar to
3 those provided to private 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: The joint legislative council's special committee on state-tribal relations 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. Based on discussion by the ad hoc working group on tribal schools and additional information provided by the department of public instruction (DPI) staff and Mr. Wilhelmi, this bill draft was prepared relating to the first recommendation. The second recommendation is addressed in a separate bill draft, WLC: 0177/1.

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 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 Mashkiisiibii (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 this draft does 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 by the courts 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 and may condition such funding or benefits on meeting certain prerequisites to be eligible for the funding or benefits.

THE DRAFT

This draft addresses the first topic suggested by the Menominee Tribe, that is, to provide the same benefits to tribal schools and tribal school pupils that are provided to private schools and private school pupils.

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, with the exception of statutes relating to: transportation; special education; and eligibility for bonding for certain

building projects through the Wisconsin health and educational facilities authority. The draft also does not amend any statutes in ch. 119, stats., that refer to private schools since ch. 119 relates only to the Milwaukee public schools. In general, the amendments add references to tribal schools, tribal school employees, or tribal school pupils in those statutes. In some cases, the draft includes language relating to tribal schools that is not identical to current statutes relating to private schools. These relate to statutes in which a requirement is integrally linked to a benefit provided—for example, statutes allowing a private school to receive certain confidential records but prohibiting redisclosure of the record. For those statutes, the draft generally extends the benefit to a tribal school that chooses to comply with the required provision.

With respect to statutes that explicitly impose requirements on private schools unrelated to a benefit, the draft does not add a reference to tribal schools. Such statutes include requirements to: make a report to DPI about enrollment; report to DPI charges and convictions of certain crimes and dismissals and resignations related to immoral conduct of a person licensed by DPI and employed by the school; display the flag and offer the pledge of allegiance or national anthem; have a first aid kit; conduct fire drills; establish school safety zones; prohibit the use of a pupil's social security number as a pupil identification number; have periodic lead inspections in kindergarten; and abide by restaurant regulations if food is brought in under contract.

The draft amends several statutes that refer generically to schools without explicitly referring to public schools, private schools, or tribal schools to make clear that if a benefit applies to the school, the benefit also applies to tribal schools. The draft does not amend statutes that impose a requirement generically on schools, including private schools, to impose the requirement on tribal schools, for example, statutes relating to excluding children who have not met the immunization or waiver of immunization requirements. Whether such statutes apply to tribal schools is an issue to be resolved by the courts.

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.

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
16 least one election official at the polling place other than the chief inspector is a qualified elector
17 of this state. No pupil may serve as chief inspector at a polling place under this paragraph.
18 Before appointment by any municipality of a pupil as an inspector under this paragraph, the
19 municipal clerk shall obtain written authorization from the pupil's parent or guardian and from
20 the principal of the school where the pupil is enrolled for the pupil to serve for the entire term
21 for which he or she is appointed. Upon appointment of a pupil to serve as an inspector, the

1 municipal clerk shall notify the principal of the school where the pupil is enrolled of the date
2 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.

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

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

NOTE: Provides that representatives of tribal schools may serve on the DPI council on special education.

6 **SECTION 4.** 15.377 (8) (c) 14. of the statutes is created to read:

7 15.377 (8) (c) 14. One person licensed as a teacher and actively employed in a tribal
8 school as defined in s. 115.001 (16), recommended by a federally recognized American Indian
9 tribe or band in this state that has a tribal school.

NOTE: Current law permits one licensed teacher actively employed in a private school, recommended by the Wisconsin association of nonpublic schools (which has been renamed the Wisconsin council of religious and independent schools), to serve on the DPI professional standards council for teachers. The council currently 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.

The draft increases the number to 20 members by adding a provision for a licensed teacher employed by a tribal school. The state superintendent must select this teacher based on the recommendation of a tribe that has a tribal school.

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

11 15.57 (3) One representative of public schools and one representative of private schools
12 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.

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

2 16.971 (15) Provide private schools and tribal schools as defined in s. 115.001 (16) with
3 telecommunications access under s. 16.997 and contract with telecommunications providers
4 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.

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

6 16.972 (1) (cm) “Qualified tribal school” means a tribal school as defined in s. 115.001
7 (16).

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

9 16.972 (2) (b) Provide such computer services and telecommunications services to
10 local governmental units and the broadcasting corporation and provide such
11 telecommunications services to qualified private schools, tribal schools, postsecondary
12 institutions, museums, and zoos, as the department considers to be appropriate and as the
13 department can efficiently and economically provide. The department may exercise this
14 power only if in doing so it maintains the services it provides at least at the same levels that
15 it provides prior to exercising this power and it does not increase the rates chargeable to users
16 served prior to exercise of this power as a result of exercising this power. The department may
17 charge local governmental units, the broadcasting corporation, and qualified private schools,
18 tribal schools, postsecondary institutions, museums, and zoos, for services provided to them

1 under this paragraph in accordance with a methodology determined by the department. Use
2 of telecommunications services by a qualified private school, tribal school, or postsecondary
3 institution shall be subject to the same terms and conditions that apply to a municipality using
4 the same services. The department shall prescribe eligibility requirements for qualified
5 museums and zoos to receive telecommunications services under this paragraph.

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

7 16.974 (2) Subject to s. 16.972 (2) (b), enter into and enforce an agreement with any
8 agency, any authority, any unit of the federal government, any local governmental unit, ~~or~~ any
9 entity in the private sector, or any tribal school as defined in s. 115.001 (16) to provide services
10 authorized to be provided by the department to that agency, authority, unit, ~~or~~ entity, or tribal
11 school at a cost specified in the agreement.

12 (3) Develop or operate and maintain any system or device facilitating Internet or
13 telephone access to information about programs of agencies, authorities, local governmental
14 units, ~~or~~ entities in the private sector, or any tribal schools or otherwise permitting the
15 transaction of business by agencies, authorities, local governmental units, ~~or~~ entities in the
16 private sector, or tribal schools by means of electronic communication. The department may
17 assess executive branch agencies, other than the board of regents of the University of
18 Wisconsin System, for the costs of systems or devices relating to information technology or
19 telecommunications that are developed, operated, or maintained under this subsection in
20 accordance with a methodology determined by the department. The department may also
21 charge any agency, authority, local governmental unit, ~~or~~ entity in the private sector, or tribal
22 school for such costs as a component of any services provided by the department to that
23 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.

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

2 **16.9785 Purchases of computers by teachers.** The department shall negotiate with
3 private vendors to facilitate the purchase of computers and other educational technology, as
4 defined in s. 24.60 (1r), by public ~~and~~, private, and tribal elementary and secondary school
5 teachers for their private use. The department shall attempt to make available types of
6 computers and other educational technology under this section that will encourage and assist
7 teachers in becoming knowledgeable about the technology and its uses and potential uses in
8 education.

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

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

10 16.99 (2g) “Educational agency” means a school district, charter school sponsor,
11 secured correctional facility, private school, tribal school as defined in s. 115.001 (16),
12 cooperative educational service agency, technical college district, private college, public
13 library system, public library board, public museum, the Wisconsin Center for the Blind and
14 Visually Impaired, or the Wisconsin Educational Services Program for the Deaf and Hard of
15 Hearing.

NOTE: Includes tribal schools under the educational telecommunications access program which is part of the TEACH program. See s. 16.971 (15), above.

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.

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

1 20.255 (2) (cn) *Aids for school lunches and nutritional improvement.* The amounts in
2 the schedule for the payment of school lunch aids to school districts ~~and to~~ private schools,
3 and tribal schools under s. 115.34 (2) and for nutritional improvement under ss. 36.51, 38.36,
4 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.

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

6 20.505 (1) (is) *Information technology and communications services; nonstate entities.*
7 From the sources specified in ss. 16.972 (2) (b) and (c), 16.974 (2) and (3), and 16.997 (2) (d),
8 to provide computer, telecommunications, electronic communications, and supercomputer
9 services to state authorities, units of the federal government, local governmental units, tribal
10 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.

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

12 27.01 (7) (c) 10. Any motor vehicle operated for the purpose of transporting pupils to
13 or from curricular or extracurricular activities of a public or private school ~~or a~~ home-based
14 private educational program under s. 118.15 (4), or a tribal school as defined in s. 115.001 (16).
15 The operator of a motor vehicle transporting pupils under this subdivision shall possess and
16 exhibit for inspection a written authorization from an administrator of the school or
17 home-based private educational program indicating that admission to the vehicle admission
18 area is part of an official school or home-based private educational program function and
19 indicating the date for which the authorization is applicable. A separate authorization is

1 required for each date on which the motor vehicle is admitted to the vehicle admission area
2 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.

3 **SECTION 15.** 28.06 (1) of the statutes is amended to read:

4 28.06 (1) LIMITATION. Only planting stock of species and sizes suitable for forest and
5 woodlot planting and for planting by school pupils, including pupils at a tribal school as
6 defined in s. 115.001 (16), to celebrate arbor day under s. 118.025 shall be produced in state
7 forest nurseries. The department may employ labor at prevailing local wages for nursery
8 operation or reforestation.

NOTE: Current law provides that the state forest nurseries may plant stock suitable for planting by school pupils to celebrate arbor day and authorizes distribution of the stock for arbor day plantings by school pupils. The draft specifies that tribal school pupils are included.

9 **SECTION 16.** 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 17.** 30.74 (1) (a) of the statutes is amended to read:

14 30.74 (1) (a) The department shall create comprehensive courses on boating safety and
15 operation. These courses shall be offered in cooperation with schools, including tribal schools
16 as defined in s. 115.001 (16), private clubs and organizations, and may be offered by the
17 department in areas where requested and where other sponsorship is unavailable. The

1 department shall issue certificates to persons 10 years of age or older successfully completing
2 such courses.

NOTE: Requires the department of natural resources to create boating safety courses and offer them in cooperation with, among others, schools, including tribal schools.

3 **SECTION 18.** 36.11 (36m) of the statutes is amended to read:

4 36.11 **(36m)** SCHOOL SAFETY RESEARCH. The board shall direct the schools of education
5 and other appropriate research-oriented departments within the system, to work with the
6 technical college system board under s. 38.04 (27), school districts, private schools, tribal
7 schools as defined in s. 115.001 (16), and the department of public instruction to present to
8 school districts ~~and~~, private schools, and tribal schools the results of research on models for
9 and approaches to improving school safety and reducing discipline problems in schools and
10 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.

11 **SECTION 19.** 38.01 (9m) of the statutes is created to read:

12 38.01 **(9m)** “Tribal school” has the meaning given in s. 115.001 (16).

13 **SECTION 20.** 38.001 (3) (a) of the statutes is amended to read:

14 38.001 **(3)** (a) 1. Contract with secondary schools, including tribal schools, to provide
15 educational opportunities for high school age students in order to enhance their potential for
16 benefiting from postsecondary education and for obtaining employment.

17 2. Coordinate and cooperate with secondary schools, including tribal schools, to
18 facilitate the transition of secondary school students into postsecondary technical college
19 education through curriculum articulation and collaboration.

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

1 **SECTION 21.** 38.04 (27) of the statutes is amended to read:

2 38.04 (27) SCHOOL SAFETY. The board shall work with schools of education and other
3 departments of the University of Wisconsin System under s. 36.11 (36m), school districts,
4 private schools, tribal schools, and the department of public instruction to present to school
5 districts ~~and~~ private schools, and tribal schools the results of research on models for and
6 approaches to improving school safety and reducing discipline problems in schools and at
7 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.

8 **SECTION 22.** 38.14 (3) (a) and (bm) of the statutes are amended to read:

9 38.14 (3) (a) The district board may enter into contracts to provide educational services
10 to public and private educational institutions, tribal schools, federal and state agencies, local
11 governmental bodies, industries, and businesses.

12 (bm) The district board may enter into contracts to provide fiscal and management
13 services to public and private educational institutions, tribal schools, federal and state
14 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.

15 **SECTION 23.** 39.41 (1) (bm) and (1m) (a), (b), (c) 4., 5., (e), (em), (g), and (j) of the
16 statutes are amended to read:

17 39.41 (1) (bm) “Senior” means a pupil enrolled in the 12th grade in a public or private
18 high school, a tribal school, the school operated by the Wisconsin Educational Services

1 Program for the Deaf and Hard of Hearing, or the school operated by the Wisconsin Center
2 for the Blind and Visually Impaired.

3 (1m) (a) Subject to par. (d), by February 15 of each school year, the school board of each
4 school district operating one or more high schools and the governing body of each private high
5 school and of each tribal high school shall:

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

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

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

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

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

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

21 (b) By February 15 of each school year, the school board of each school district
22 operating one or more high schools and the governing body of each private high school and
23 of each tribal high school may, for each high school with an enrollment of less than 80 pupils,

1 nominate the senior with the highest grade point average in all subjects who may be designated
2 as a scholar by the executive secretary under par. (c) 3.

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

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

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

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

10 (g) Notwithstanding par. (a), if a high school of at least 80 pupils closes or merges in
11 the 1991-92 school year or in any school year thereafter, the school board of the school district
12 operating the high school or the governing body of the private or tribal high school shall,
13 subject to par. (d), for each of the 2 school years following the closure or merger, designate
14 the same number of scholars from among the pupils enrolled in the high school at the time of
15 closure or merger as the number of scholars designated for that high school in the school year
16 the high school closed or merged. Any seniors designated under this paragraph shall be
17 eligible for an original scholarship under this section.

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

23 **SECTION 24.** 39.41 (1) (c) of the statutes is created to read:

24 39.41 (1) (c) "Tribal school" has the meaning given in s. 115.001 (16).

NOTE: SECTIONS 23 and 24 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.

1 **SECTION 25.** 45.396 (2) of the statutes is amended to read:

2 45.396 (2) Any veteran upon the completion of any correspondence course or part-time
3 classroom study from an institution of higher education located in this state, from a school that
4 is approved under s. 45.35 (9m), from a proprietary school that is approved under s. 45.54, ~~or~~
5 from any public or private high school, or from any tribal school as defined in s. 115.001 (16)
6 that operates high school grades may be reimbursed in part for the cost of the course by the
7 department upon presentation to the department of a certificate from the school indicating that
8 the veteran has completed the course and stating the cost of the course and upon application
9 for reimbursement completed by the veteran and received by the department no later than 60
10 days after the termination of the course for which the application for reimbursement is made.
11 The department shall accept and process an application received more than 60 days after the
12 termination of the course if the applicant shows good cause for the delayed receipt. The
13 department may not require that an application be received sooner than 60 days after a course
14 is completed. Benefits granted under this section shall be paid out of the appropriation under
15 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.

16 **SECTION 26.** 46.275 (3r) (a) 3. of the statutes is amended to read:

17 46.275 (3r) (a) 3. The person will be relocated into the home of the person's parent or
18 guardian and will be receiving state monitoring of the relocation and services provided by a
19 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 certain circumstances, including the circumstance in s. 46.275 (3r) (a) 3., which is amended to include a tribal school.

1 **SECTION 27.** 48.01 (18m) of the statutes is created to read:

2 48.01 **(18m)** “Tribal school” has the meaning given in s. 115.001 (16).

3 **SECTION 28.** 48.345 (12) of the statutes is amended to read:

4 48.345 **(12)** EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may
5 order the child to attend any of the following:

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

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

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

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

16 5. Pursuant to a contractual agreement with the school district in which the child resides,
17 an educational program provided by a tribal school.

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

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

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

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

8 (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.

9 **SECTION 29.** 48.355 (2) (c) of the statutes is amended to read:

10 48.355 (2) (c) If school attendance is a condition of an order under par. (b) 7., the order
11 shall specify what constitutes a violation of the condition and shall direct the school board of
12 the school district, or the governing body of the private school, in which the child is enrolled
13 or shall request the governing body of the tribal school in which the child is enrolled to notify
14 the county department that is responsible for supervising the child or, in a county having a
15 population of 500,000 or more, the department within 5 days after any violation of the
16 condition by the child.

NOTE: 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, current law requires that the order direct the school board or the governing body of a private school to notify the court within 5 days of a violation of the condition. The draft requires that the court order request that a tribal school do so.

1 **SECTION 30.** 48.396 (1) of the statutes is amended to read:

2 48.396 (1) Law enforcement officers' records of children shall be kept separate from
3 records of adults. Law enforcement officers' records of the adult expectant mothers of unborn
4 children shall be kept separate from records of other adults. Law enforcement officers'
5 records of children and the adult expectant mothers of unborn children shall not be open to
6 inspection or their contents disclosed except under sub. (1b), (1d), or (5) or s. 48.293 or by
7 order of the court. This subsection does not apply to the representatives of newspapers or other
8 reporters of news who wish to obtain information for the purpose of reporting news without
9 revealing the identity of the child or adult expectant mother involved, to the confidential
10 exchange of information between the police and officials of the public or private school
11 attended by the child or other law enforcement or social welfare agencies or to children 10
12 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction.
13 A public school official who obtains information under this subsection shall keep the
14 information confidential as required under s. 118.125, and a private school official who
15 obtains information under this subsection shall keep the information confidential in the same
16 manner as is required of a public school official under s. 118.125. This subsection does not
17 apply to the confidential exchange of information between the police and officials of the tribal
18 school attended by the child if enforceable protections are provided by a tribal school policy
19 or tribal law that requires tribal school officials to keep the information confidential in at least
20 the same manner as is required of a public school official under s. 118.125. A law enforcement
21 agency that obtains information under this subsection shall keep the information confidential

1 as required under this subsection and s. 938.396 (1). A social welfare agency that obtains
2 information under this subsection shall keep the information confidential as required under
3 ss. 48.78 and 938.78.

NOTE: Current law provides that the subsection which specifies that, subject to certain exceptions, law enforcement records relating to children under ch. 48 (the children's code) are confidential does not apply to the confidential exchange of information between the police and school officials. Current law further requires that public school officials who obtain information under this provision keep the information confidential as required in s. 118.125, stats. (relating to the confidentiality of pupil records). Current law also requires that private school officials who obtain information under this provision keep the information confidential in the same manner as is required of a public school official. The draft permits the police to confidentially exchange information with tribal school officials if a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in at least the same manner as is required of public and private school officials.

4 **SECTION 31.** 48.65 (2) (b) of the statutes is amended to read:

5 48.65 (2) (b) A public or parochial school or a tribal school.

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. Because the day care license statute is a state civil regulatory law, 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, although a tribe or tribal member may choose to obtain a license. In the event a court interprets the day care license statute as applying to a tribe or tribal member, the draft makes clear that a tribal school is not subject to this statute.

6 **SECTION 32.** 48.78 (2) (b) of the statutes is amended to read:

7 48.78 (2) (b) Paragraph (a) does not apply to the confidential exchange of information
8 between an agency and another social welfare agency, a law enforcement agency, a public
9 school, or a private school regarding an individual in the care or legal custody of the agency.
10 A social welfare agency that obtains information under this paragraph shall keep the

1 information confidential as required under this section and s. 938.78. A law enforcement
2 agency that obtains information under this paragraph shall keep the information confidential
3 as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information
4 under this paragraph shall keep the information confidential as required under s. 118.125, and
5 a private school that obtains information under this paragraph shall keep the information
6 confidential in the same manner as is required of a public school under s. 118.125. Paragraph
7 (a) does not apply to the confidential exchange of information between an agency and officials
8 of a tribal school regarding an individual in the care or legal custody of the agency if
9 enforceable protections are provided by a tribal school policy or tribal law that requires tribal
10 school officials to keep the information confidential in at least the same manner as is required
11 of a public school official 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 (collectively referred to as agency) must keep its records relating to children under ch. 48, stats., 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. The draft permits an agency to confidentially exchange information with tribal school officials if a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in at least the same manner required of public and private school officials.

12 **SECTION 33.** 49.26 (1) (a) 2. bm. of the statutes is created to read:

13 49.26 (1) (a) 2. bm. A tribal school as defined in s. 115.001 (16).

NOTE: 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.

14 **SECTION 34.** 49.26 (1) (g) 2. of the statutes is amended to read:

1 49.26 (1) (g) 2. The individual has not graduated from a public ~~or~~, private, or tribal high
2 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.

3 **SECTION 35.** 51.45 (4) (d) of the statutes is amended to read:

4 51.45 (4) (d) Cooperate with the department of public instruction, local boards of
5 education, schools, including tribal schools as defined in s. 115.001 (16), police departments,
6 courts, and other public and private agencies, organizations, and individuals in establishing
7 programs for the prevention of alcoholism and treatment of alcoholics and intoxicated
8 persons, and preparing curriculum materials thereon for use at all levels of school education.

NOTE: Requires DHFS to cooperate with various entities, including tribal schools, to establish alcoholism prevention and treatment programs and to prepare curriculum materials.

9 **SECTION 36.** 103.21 (7) of the statutes is created to read:

10 103.21 (7) “Tribal school” has the meaning given in s. 115.001 (16).

11 **SECTION 37.** 103.23 (2) (intro.), (a), (3m) (c) and (5) of the statutes are amended to read:

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

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

17 **SECTION 38.** 103.25 (3m) (c) and (5) of the statutes are amended to read:

18 103.25 (3m) (c) This subsection does not apply to employment of a minor by a
19 newspaper publisher or in a fund-raising sale for a nonprofit organization, a public school ~~or~~,
20 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 39.** 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 40.** 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 36 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 on reservations or on off–reservation trust land to minors who are engaged in such activities for a tribal school. While a court may be less likely to apply the statute to American Indian minors who are fund–raising on their own reservation or off–reservation trust land, it is possible that a court would apply the statute to non–Indian minors who are fund–raising for a tribal school.

SECTIONS 37 to 40 specify that the statutes do not apply if a minor is engaged in fund–raising activities for a tribal school.

10 **SECTION 41.** 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 ss. 103.67 (2) (c) and 103.71 (1) (b), below.

12 **SECTION 42.** 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 36 to 40, above.

1 **SECTION 43.** 103.71 (1) (b) of the statutes is amended to read:

2 103.71 (1) (b) A diploma or certificate to this effect issued by the superintendent of the
3 parochial school system or by the principal of the parochial or private school or tribal school
4 last attended by such minor. Such superintendent, principal, or clerk shall issue such diploma
5 or certificate upon receipt of any application in behalf of any minor entitled thereto. As used
6 in this paragraph the term “school district” shall apply to all regularly constituted school
7 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.

8 **SECTION 44.** 115.001 (16) of the statutes is created to read:

9 115.001 (16) “Tribal school” means an institution with an educational program that has
10 as its primary purpose providing education in any grade or grades from kindergarten to 12 and
11 that is controlled by the elected governing body of a federally recognized American Indian
12 tribe or band in Wisconsin or by a tribal educational authority established under the laws of
13 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.

14 **SECTION 45.** 115.28 (7) (b) and (e) 1. and (11) (intro.) of the statutes are amended to
15 read:

16 115.28 (7) (b) Subject to the same rules and laws concerning qualifications of applicants
17 and granting and revocation of licenses or certificates under par. (a), the state superintendent
18 shall grant certificates and licenses to teachers in private schools and tribal schools, except that
19 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 a 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.

COMMENT: Whether a tribal school is obligated to employ only state licensed or certified teachers is determined by tribal law (or by federal law if the tribal school receives funding from the BIA). Because the issue is not determined by state law, the draft does not include language regarding the matter.

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.

1 All driver education courses approved or for which standards are established under this
2 subsection shall do all of the following:

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: 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.

3 **SECTION 46.** 115.34 (2) of the statutes is amended to read:

4 115.34 (2) The state superintendent shall make payments to school districts ~~and to,~~
5 private schools, and tribal schools for school lunches served to children in the prior year as
6 determined by the state superintendent from the appropriation under s. 20.255 (2) (cn).
7 Payments to school districts ~~and to,~~ private schools, and tribal schools shall equal the state's
8 matching obligation under 42 USC 1751 et seq. Payments in the current year shall be
9 determined by prorating the state's matching obligation based on the number of school lunches
10 served to children in the prior year. In this subsection, "private school" means any school
11 defined in s. 115.001 (3r) which complies with the requirements of 42 USC 2000d.

NOTE: Adds tribal schools to the school lunch program.

12 **SECTION 47.** 115.341 (1) and (2) of the statutes are amended to read:

13 115.341 (1) From the appropriation under s. 20.255 (2) (cm), the state superintendent
14 shall reimburse each school board 10 cents for each breakfast served at a school that meets the
15 requirements of 7 CFR 220.8 or 220.8a, whichever is applicable, and shall reimburse each
16 governing body of a private school or tribal school 10 cents for each breakfast served at the
17 private school or tribal school that meets the requirements of 7 CFR 220.8 or 220.8a,
18 whichever is applicable.

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

NOTE: Adds tribal schools to the school breakfast program.

5 **SECTION 48.** 115.343 (1) of the statutes is amended to read:

6 **115.343 Wisconsin school day milk program. (1)** The department shall establish a
7 school day milk program. A school participating in the program, including a tribal school,
8 shall offer each eligible child one half-pint of Wisconsin-produced whole milk, 2% milk,
9 1.5% milk, one percent milk, 0.5% milk, skim milk or chocolate milk on each day in which
10 school is in session. If a child is allergic to milk or has metabolic disorders or other conditions
11 which prohibit him or her from drinking milk, the child shall be offered juice as a substitute.
12 Any school that participates in the program is encouraged to consider bids from local milk
13 suppliers. The school shall keep all information related to the identity of the pupils who
14 receive a beverage under the program confidential. In this subsection, "Wisconsin-produced"
15 means that all or part of the raw milk used by the milk processor was produced in this state.

NOTE: Current law provides aid for the school day milk program.
According to DPI staff, this statute is interpreted as applying to all
schools, including tribal schools. The draft clearly specifies that tribal
schools may be participating schools.

16 **SECTION 49.** 115.345 (7m) of the statutes is amended to read:

17 **115.345 (7m)** A private school or tribal school may establish a food services plan for
18 elderly persons. If the plan meets all of the requirements of this section and is approved by
19 the state superintendent, the private school or tribal school is eligible for reimbursement in the
20 same manner as school districts under sub. (5).

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

1 **SECTION 50.** 115.36 (1), (2) (a), (b) and (d) 3. of the statutes are amended to read:

2 115.36 (1) The purpose of this section is to enable and encourage public ~~and~~, private,
3 and tribal schools to develop comprehensive programs to prevent or ameliorate alcohol and
4 other drug abuse among minors.

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

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

11 (d) 3. The systematic dissemination of information concerning available resources to
12 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.

13 **SECTION 51.** 115.365 (1), (2) (a) and (b) of the statutes are amended to read:

14 115.365 (1) The purpose of this section is to enable and encourage public ~~and~~, private,
15 and tribal schools to develop programs designed to prevent suicide among minors.

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

1 tendencies or is contemplating suicide; and the coordination of school suicide prevention
2 programs and activities with the suicide prevention and intervention programs and activities
3 of other state and local agencies. Persons other than the professional staff of public ~~and~~,
4 private, and tribal schools and county departments under ss. 46.215, 46.22, and 51.42 may
5 attend the training programs. The department may charge such persons a fee sufficient to
6 cover the increased costs to the department of their participation in the programs.

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

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

11 **SECTION 52.** 115.368 (1), (2) (a) and (b) of the statutes are amended to read:

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

17 (2) (a) Develop and conduct protective behaviors training programs for the professional
18 staff of public ~~and~~, private, and tribal schools and counties under ss. 46.034, 46.215, 46.22,
19 46.23, 51.42, and 51.437. The training programs shall include information on how to assist
20 a minor and his or her parent or guardian in recognizing, avoiding, preventing, and halting
21 physically or psychologically intrusive or abusive situations that may be harmful to the minor,
22 including child abuse, sexual abuse, and child enticement. The training programs shall

1 emphasize how to help minors to develop positive psychological, emotional, and
2 problem-solving responses to such situations, and to avoid relying on negative, fearful, or
3 solely reactive methods of dealing with such situations. The training programs shall also
4 include information on the detection, by other minors, their parents or guardians, and school
5 staff, of conditions that indicate that a minor is being or has been subjected to such situations;
6 the proper action to take when there is reason to believe that a minor is being or has been
7 subjected to such situations; and the coordination of school protective behaviors programs and
8 activities with programs and activities of other state and local agencies. Persons other than
9 the professional staff of public and private, and tribal schools and counties under ss. 46.034,
10 46.215, 46.22, 46.23, 51.42, and 51.437 may attend the training programs. The department
11 may charge such persons a fee sufficient to cover the increased costs of materials, but not
12 personnel cost, to the department of their participation in the programs. The department may
13 not deny any resident of Wisconsin the opportunity to participate in a program if the person
14 is unable to pay any fee.

15 (b) Provide consultation and technical assistance to public and private, and tribal
16 schools for the development and implementation of protective behaviors programs and the
17 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.

18 **SECTION 53.** 115.42 (1) (a) 2. and (2) (a) 2. of the statutes are amended to read:

19 115.42 (1) (a) 2. The person is licensed as a teacher by the state superintendent or
20 employed as a teacher in a private school or tribal school located in this state.

21 (2) (a) 2. The person maintains his or her license as a teacher by the state superintendent
22 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.

1 **SECTION 54.** 115.52 (3) (b) 1., 2. and 10. of the statutes are amended to read:

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

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

8 10. Rent or lease technological materials and assistive technology devices, as defined
9 in s. 115.76 (1), to local educational agencies, cooperative educational service agencies,
10 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.

11 **SECTION 55.** 115.525 (3) (b) 2. of the statutes is amended to read:

12 115.525 (3) (b) 2. Provide technical assistance and consultation services to entities such
13 as local educational agencies, cooperative educational service agencies, county children with
14 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.

15 **SECTION 56.** 116.01 of the statutes is amended to read:

16 **116.01 Purpose.** The organization of school districts in Wisconsin is such that the
17 legislature recognizes the need for a service unit between the school district and the state
18 superintendent. The cooperative educational service agencies are designed to serve

1 educational needs in all areas of Wisconsin by serving as a link both between school districts
2 and between school districts and the state. Cooperative educational service agencies may
3 provide leadership, coordination, and education services to school districts, University of
4 Wisconsin System institutions, and technical colleges. Cooperative educational service
5 agencies may facilitate communication and cooperation among all public and private, and
6 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.

7 **SECTION 57.** 116.032 (1) and (3) (a) of the statutes are amended to read:

8 116.032 (1) Subject to subs. (2) to (5), for the purpose of providing services to pupils
9 a board of control may contract with school districts, University of Wisconsin System
10 institutions, technical college district boards, private schools, tribal schools, and agencies or
11 organizations that provide services to pupils. A board of control may also contract with one
12 or more school boards to operate a charter school under s. 118.40 (3) (c).

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

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

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

19 **SECTION 58.** 118.025 of the statutes is amended to read:

1 **118.025 Arbor day observance.** A school principal, including a tribal school
2 principal, may request one free tree provided from state forest nurseries by the department of
3 natural resources under s. 28.06 for each 4th grade pupil in the school for planting in
4 conjunction with an annual observance and celebration of arbor day.

NOTE: Specifies that tribal schools may request trees from the state
forest nursery for arbor day observance.

5 **SECTION 59.** 118.08 (1) of the statutes is amended to read:

6 118.08 (1) On any street or highway which borders the grounds of any public ~~or~~ private,
7 or tribal school in which school is held for a term of not less than 6 months, the authority in
8 charge of the maintenance of the street or highway shall erect black and yellow “school”
9 warning signs. The authority may also designate school crossings across any street or
10 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.

11 **SECTION 60.** 118.125 (2) (n) of the statutes is amended to read:

12 118.125 (2) (n) For the purpose of providing services to a pupil before adjudication, a
13 school board may disclose pupil records to a law enforcement agency, district attorney, city
14 attorney, corporation counsel, agency, as defined in s. 938.78 (1), intake worker under s.
15 48.067 or 938.067, court of record, municipal court, private school, or another school board
16 if disclosure is pursuant to an interagency agreement and the person to whom the records are
17 disclosed certifies in writing that the records will not be disclosed to any other person except
18 as permitted under this subsection. A school board may disclose pupil records to a tribal
19 school under this paragraph if disclosure is pursuant to an agreement between the school
20 district and the tribal school and if enforceable protections are provided by a tribal school

1 policy or tribal law that requires tribal school officials not to disclose the records to any other
2 person except as permitted under this subsection.

NOTE: Current law provides that, for the purpose of providing services to a pupil before adjudication, a school board may disclose pupil records to certain entities, including a private school, if disclosure is pursuant to an interagency agreement and the person to whom records are disclosed certifies that the records will not be disclosed to any other person except as permitted under s. 118.125 (2), stats. The draft permits a school board to disclose pupil records to a tribal school under this provision if disclosure is pursuant to an agreement between the school district and the tribal school and if enforceable protections are provided by a tribal school policy or tribal law that requires tribal school officials not to disclose the records to any other person except as permitted under s. 118.125 (2), stats.

3 **SECTION 61.** 118.125 (4) of the statutes is amended to read:

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

NOTE: Clarifies that, under current law, the requirement that a school district transfer records to a school includes a requirement that a school district transfer records to a tribal school. The draft also 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.

1 **SECTION 62.** 118.127 (2) of the statutes is amended to read:

2 **118.127 (2)** A school district ~~or~~, private school, or tribal school may disclose
3 information from law enforcement officers' records obtained under s. 938.396 (1m) only to
4 persons employed by the school district who are required by the department under s. 115.28
5 (7) to hold a license, to persons employed by the private school or tribal school as teachers and
6 to other school district ~~or~~, private school, or tribal school officials who have been determined
7 by the school board or governing body of the private school or tribal school to have legitimate
8 educational interests, including safety interests, in that information. In addition, if that
9 information relates to a pupil of the school district ~~or~~, private school, or tribal school, the
10 school district ~~or~~, private school, or tribal school may also disclose that information to those
11 employees of the school district ~~or~~, private school, or tribal school who have been designated
12 by the school board or governing body of the private school or tribal school to receive that
13 information for the purpose of providing treatment programs for pupils enrolled in the school
14 district ~~or~~, private school, or tribal school. A school district may not use law enforcement
15 officers' records obtained under s. 938.396 (1m) as the sole basis for expelling or suspending
16 a pupil or as the sole basis for taking any other disciplinary action, including action under the
17 school district's athletic code, against a pupil.

NOTE: This amendment relates to the amendment to s. 938.396 (1m), below. If law enforcement records are disclosed to a tribal school under that provision, 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 the tribal school may disclose the information. (The amendment to s. 938.396 (1m),

below, specifies that the law enforcement agency policy must specify that the law enforcement agency cannot provide information under s. 938.396 (1m) to a tribal school unless the governing body of the tribal school agrees that the information will be used by the tribal school in the same manner as public and private schools as provided under s. 118.127 (2).)

1 **SECTION 63.** 118.145 (3) and (4) of the statutes are amended to read:

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

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

NOTE: 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).)

1 **SECTION 64.** 118.15 (1) (d) 4. of the statutes is amended to read:

2 118.15 (1) (d) 4. Enrollment in any nonsectarian private school or program or tribal
3 school, located in the school district in which the child resides, which complies with the
4 requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant
5 to a contractual agreement which provides for the payment of the child's tuition by the school
6 district.

NOTE: Under current law, 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 a request to attend a private school, rather than the public school. The school board then decides the matter. The draft permits a curriculum modification to be requested to attend a tribal school.

7 **SECTION 65.** 118.15 (4) of the statutes is amended to read:

8 118.15 (4) Instruction in a home-based private educational program that meets all of
9 the criteria under s. 118.165 (1) may be substituted for attendance at a public or private school.
10 Attendance at a tribal school in which the child is enrolled during the full period and hours,
11 religious holidays excepted, that the tribal school is in session until the end of the school term,
12 quarter, or semester of the school year in which the child becomes 18 years of age may be
13 substituted for attendance at a public or private school if the tribal school has in effect a policy,
14 or if the American Indian tribe or band that controls or established the tribal school has in effect
15 a law, providing for school attendance enforcement that effectuates the purpose of this section
16 and s. 118.16.

NOTE: Current law does not clearly provide that attendance at a tribal school satisfies the compulsory attendance laws. The draft provides explicitly that attendance of a tribal school does satisfy those laws if the

tribal school has in effect a policy, or the tribe has in effect a law, providing for school attendance enforcement that effectuates the purpose of s. 118.15 (compulsory school attendance) and s. 118.16 (school attendance enforcement).

Of particular interest is s. 118.16 (5) which specifies the activities that a school must undertake (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. These activities include meeting, or attempting to meet with the parents, providing an opportunity for educational counseling, and evaluating learning problems and social problems.

COMMENT: The draft does not treat tribal schools similarly to private schools in that private schools are required: (1) to keep records, including: the dates school is held, 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) make that information available to the school board's school attendance officer.

1 **SECTION 66.** 118.153 (1) (b) of the statutes is amended to read:

2 118.153 (1) (b) "Dropout" means a child who ceased to attend school, does not attend
3 a public ~~or~~, private, or tribal school, technical college, or home-based private educational
4 program on a full-time basis, has not graduated from high school, and does not have an
5 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.

COMMENT: The 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.

6 **SECTION 67.** 118.16 (2) (em) of the statutes is created to read:

1 118.16 (2) (em) Shall request information regarding the attendance of any child
2 between the ages of 6 and 18 who is a resident of the school district and who claims or is
3 claimed to be in attendance at a tribal school.

NOTE: As part of the school attendance enforcement statute, current law requires private schools to keep a record containing certain information about pupils, including their attendance. Current law also specifies that a school attendance officer must have access to this information at all reasonable times. [s. 118.16 (2) (e) and (3), stats.] The draft requires a school attendance officer to request information about the attendance of a child between the ages of 6 and 18 who is a resident of the school district and who claims or is claimed to be attending a tribal school.

COMMENT: The draft does not require the tribal school to keep or provide the information to the school attendance officer.

4 **SECTION 68.** 118.162 (1) (am) and (m) of the statutes are created to read:

5 118.162 (1) (am) A representative from each tribal school in the county, designated by
6 the governing body of that tribal school that he or she represents, who may be a member of
7 the tribal school governing body, school administrator, teacher, pupil services professional,
8 or parent of a child enrolled in that tribal school.

9 (m) A parent of a pupil enrolled in a tribal school located in the county, who resides in
10 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.

11 **SECTION 69.** 118.255 (2) (a), (b) and (c) of the statutes are amended to read:

12 118.255 (2) (a) If a school board, cooperative educational service agency, or county
13 children with disabilities education board provides physical or mental health treatment
14 services to its pupils, it may also provide such services within the private school or tribal
15 school facilities to those private school or tribal school pupils who are referred to the public

1 school board, cooperative educational service agency, or county children with disabilities
2 education board by the administrator of a private school or tribal school for evaluation for
3 possible servicing. There shall be no charge for health treatment services provided to any
4 pupils unless public school students or their parents are charged for similar services. For
5 purposes of state aid, as it is provided under s. 115.88 to the public school district, for the health
6 treatment service program, private school and tribal school pupils receiving such health
7 treatment services shall be counted among the pupils of the public school district receiving
8 such services, although each child may receive health treatment services within the child's
9 own school facilities, whether public ~~or~~, private, or tribal.

10 (b) A school board, cooperative educational service agency, or county children with
11 disabilities education board providing services under this section may enter into agreements
12 with the administrator of a private school or tribal school on the scheduling, space, and other
13 necessary arrangements for performance of such health treatment services. A school board,
14 cooperative educational service agency, or county children with disabilities education board
15 shall not pay any private school or tribal school for any services or facilities provided under
16 this section. Control of the health treatment services program shall rest with the public school
17 board, cooperative educational service agency, or county children with disabilities education
18 board.

19 (c) A school board, cooperative educational service agency, or county children with
20 disabilities education board may provide health treatment services only within private school
21 or tribal school facilities located within the boundaries of the school district, cooperative
22 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. One of the

required circumstances is that the pupil be referred by the tribal school administrator.

1 **SECTION 70.** 118.257 (1) (d) of the statutes is amended to read:

2 118.257 (1) (d) “School” means a public school, a parochial or private school, or a tribal
3 school which provides an educational program for one or more grades between grades 1 and
4 12 and which is commonly known as an elementary school, middle school, junior high school,
5 senior high school, or high school.

NOTE: Current law exempts from liability certain staff at a private school for removing a pupil from school premises or from school-sponsored activities for suspicion of certain activities relating to controlled substances. Changing this definition has the effect of extending to certain tribal school officials the same exemption from liability under state law. It also has the effect of adding tribal schools to the definition of school in s. 134.66 (1) (h), stats., which cross-references this definition. This would prohibit a retailer from placing a vending machine that dispenses cigarettes within 500 feet of a tribal school.

Extending the immunity protections under state law to certain tribal school staff does not affect whatever right such staff have to raise a defense of tribal sovereign immunity if sued.

6 **SECTION 71.** 118.29 of the statutes is amended to read:

7 **118.29 Administration of drugs to pupils and emergency care. (1) DEFINITIONS.**

8 In this section:

9 (a) “Administer” means the direct application of a drug or prescription drug, whether
10 by injection, ingestion or other means, to the human body.

11 (b) “Drug” has the meaning specified in s. 450.01 (10).

12 (bm) “Epinephrine auto-injector” means a device used for the automatic injection of
13 epinephrine into the human body.

1 (c) "Health care professional" means a person licensed as an emergency medical
2 technician under s. 146.50, a person certified as a first responder under s. 146.50 (8) or any
3 person licensed, certified, permitted or registered under chs. 441 or 446 to 449.

4 (d) "High degree of negligence" means criminal negligence, as defined in s. 939.25 (1).

5 (e) "Practitioner" means any physician, dentist, optometrist, physician assistant,
6 advanced practice nurse prescriber, or podiatrist licensed in any state.

7 (f) "Prescription drug" has the meaning specified in s. 450.01 (20).

8 **(2) AUTHORITY TO ADMINISTER DRUGS; CIVIL LIABILITY EXEMPTION.** (a) Notwithstanding
9 chs. 441, 447, 448, and 450, a school bus operator validly authorized under ss. 343.12 and
10 343.17 (3) (c) to operate the school bus he or she is operating, any school employee or
11 volunteer, county children with disabilities education board employee or volunteer or
12 cooperative educational service agency employee or volunteer authorized in writing by the
13 administrator of the school district, the board or the agency, respectively, or by a school
14 principal, ~~and~~ any private school employee or volunteer authorized in writing by a private
15 school administrator or private school principal, and any tribal school employee or volunteer
16 authorized in writing by a tribal school administrator or tribal school principal:

17 1. May administer any drug which may lawfully be sold over the counter without a
18 prescription to a pupil in compliance with the written instructions of the pupil's parent or
19 guardian if the pupil's parent or guardian consents in writing.

20 2. May administer a prescription drug to a pupil in compliance with the written
21 instructions of a practitioner if the pupil's parent or guardian consents in writing.

22 2m. Except for epinephrine administered under subd. 2., may use an epinephrine
23 auto-injector to administer epinephrine to any pupil who appears to be experiencing a severe
24 allergic reaction if, as soon as practicable, the school bus operator, employee, or volunteer

1 reports the allergic reaction by dialing the telephone number “911” or, in an area in which the
2 telephone number “911” is not available, the telephone number for an emergency medical
3 service provider.

4 2r. Except for glucagon administered under subd. 2., may administer glucagon to any
5 pupil who appears to be experiencing a severe hypoglycemic event if, as soon as practicable,
6 the school bus operator, employee, or volunteer reports the event to an emergency medical
7 service provider.

8 3. ~~Is Subject to sub. (4m), is~~ immune from civil liability for his or her acts or omissions
9 in administering a drug or prescription drug to a pupil under subd. 1., 2., 2m., or 2r. unless the
10 act or omission constitutes a high degree of negligence. This subdivision does not apply to
11 health care professionals.

12 (b) ~~Any Subject to sub. (4m), any~~ school district administrator, county children with
13 disabilities education board administrator, cooperative educational service agency
14 administrator, public ~~or~~ private, or tribal school principal, or private or tribal school
15 administrator who authorizes an employee or volunteer to administer a drug or prescription
16 drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless
17 it constitutes a high degree of negligence.

18 **(3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION.** Any school bus operator validly
19 authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating
20 and any public ~~or~~ private, or tribal school employee or volunteer, county children with
21 disabilities education board employee or volunteer, or cooperative educational service agency
22 employee or volunteer, other than a health care professional, who in good faith renders
23 emergency care to a pupil of a public ~~or~~ private, or tribal school is immune from civil liability
24 for his or her acts or omissions in rendering such emergency care. The immunity from civil

1 liability provided under this subsection is in addition to and not in lieu of that provided under
2 s. 895.48 (1).

3 (4) WRITTEN POLICIES. Any school board, county children with disabilities education
4 board, cooperative educational service agency or governing body of a private school whose
5 employees or volunteers may be authorized to administer drugs or prescription drugs to pupils
6 under this section shall adopt a written policy governing the administration of drugs and
7 prescription drugs to pupils. In developing the policy, the school board, board, agency, or
8 governing body shall seek the assistance of one or more appropriate health care professionals
9 who are employees of the school board, board, agency, or governing body or are providing
10 services or consultation under s. 121.02 (1) (g). The policy shall include procedures for
11 obtaining and filing in the school or other appropriate facility the written instructions and
12 consent required under sub. (2) (a), for the periodic review of such written instructions, for
13 the storing of drugs and prescription drugs, for record keeping, and for the appropriate
14 instruction of persons who may be authorized to administer drugs or prescription drugs to
15 pupils under this section.

16 (4m) The immunity under sub. (2) applies to a tribal school employee, administrator,
17 or volunteer only if the governing body of the tribal school has adopted a written policy that
18 complies with sub. (4).

19 (5) EXEMPTION. No employee except a health care professional may be required to
20 administer a drug or prescription drug to a pupil under this section by any means other than
21 ingestion.

NOTE: Current law, in pertinent part, permits private school employees and volunteers to administer certain drugs to pupils under certain circumstances and exempts them from liability under state law for doing so. It also requires the governing board of a private school to adopt a written policy governing such administration. The draft permits tribal

school employees and volunteers to do so in the same situations and extends to them the same exemptions from liability under state law if the governing body of the tribal school has adopted a written policy that complies with the requirements for a written policy that apply to private schools. The draft also extends to tribal school employees and volunteers the same exemption from liability under state law when they are rendering emergency care that applies certain others, including private school employees and volunteers.

Extending the immunity protections to tribal school employees and volunteers does not affect whatever right they have to raise a defense of tribal sovereign immunity if sued.

1 **SECTION 72.** 118.295 of the statutes is amended to read:

2 **118.295 Suicide intervention; civil liability exemption.** Any school board, private
3 school, tribal school, county children with disabilities education board, or cooperative
4 educational service agency, and any officer, employee, or volunteer thereof, who in good faith
5 attempts to prevent suicide by a pupil is immune from civil liability for his or her acts or
6 omissions in respect to the suicide or attempted suicide. The civil liability immunity provided
7 in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

NOTE: Current law, in pertinent part, specifies that private school officers, employees, and volunteers who in good faith attempt to prevent suicide by a pupil are exempt under state law from civil liability for their acts or omissions. The draft extends the same exemptions from liability under state law to tribal school officers, employees, and volunteers.

Extending the immunity protections to tribal school officers, employees, and volunteers does not affect whatever right they have to raise a defense of tribal sovereign immunity if sued.

8 **SECTION 73.** 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,

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

6 (s) Such other facts and statistics in relation to the schools, public ~~or~~ private, or tribal,
7 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.

COMMENT: This information can be included only if the tribal school voluntarily provides the information to the school district.

8 **SECTION 74.** 121.05 (1) (a) 7. of the statutes is amended to read:

9 121.05 (1) (a) 7. Pupils enrolled in a nonsectarian private school or program or tribal
10 school under s. 118.15 (1) (d) 4.

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

11 **SECTION 75.** 121.76 (1) (a) of the statutes is amended to read:

12 121.76 (1) (a) “Agency of service” means a school board, board of control of a
13 cooperative educational service agency, county children with disabilities education board, ~~or~~
14 governing body of a nonsectarian private school or university model school, or governing
15 body of a tribal school, which provides services for which tuition may be charged.

NOTE: Current law defines “agency of service” for purposes of subch. V, ch. 121, stats., which describes various circumstances under which a

pupil may attend a school other than a public school in the school district of residence, how tuition and aid are calculated if the school district is paying for it, and how tuition is otherwise calculated. The entity providing the services is the agency of service. As a result of other provisions of this draft, a tribal school may be providing the services due to curriculum modification or court-ordered educational placement.

1 **SECTION 76.** 121.76 (2) (a) of the statutes is amended to read:

2 121.76 (2) (a) ~~All~~ Subject to par. (c), tuition shall be calculated under s. 121.83 unless
3 the state superintendent approves an alternative procedure consistent with s. 121.75.

4 **SECTION 77.** 121.76 (2) (c) of the statutes is amended to read:

5 121.76 (2) (c) The agency of service, other than a tribal school, shall rebate a
6 proportional share of state or federal aid received for pupils for whom it received tuition. The
7 rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt
8 by the agency of service. If the agency of service is a tribal school, a proportional share of
9 federal aid received by the tribal school for that pupil shall be subtracted in determining the
10 amount of tuition paid to the tribal school.

NOTE: Under current law, if an agency of service, including a private school, receives tuition from a school district, it must rebate a proportional share of any federal or state aid it received. The draft does not require a tribal school to rebate such aid but instead requires subtraction of federal aid in determining the tuition payment to the tribal school.

11 **SECTION 78.** 121.76 (2) (c) of the statutes, as amended by this act, is repealed and
12 recreated to read:

13 121.76 (2) (c) The agency of service, other than a tribal school, shall rebate a
14 proportional share of state or federal aid received for pupils for whom it received tuition. The
15 rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt
16 by the agency of service. If the agency of service is a tribal school, any federal aid received
17 by the tribal school for that pupil and any state aid received by the tribal school for that pupil

1 under s. 115.455, as created by [WLC: 0177/1], shall be subtracted in determining the amount
2 of tuition paid to the tribal school.

NOTE: In the event that the separate draft [WLC: 0177/1 (providing state aid to tribal schools for certain pupils)] is enacted and a tribal school receives state aid under that enactment, the draft requires subtraction of federal aid and state aid under that draft in determining the tuition payment to the tribal school. The repeal and recreation of s. 121.76 (2) (c) becomes effective only if the separate draft is enacted.

3 **SECTION 79.** 121.78 (4) of the statutes is amended to read:

4 121.78 (4) COURT-ORDERED EDUCATIONAL SERVICES. If a pupil is receiving educational
5 services as the result of a court order under s. 48.345 (12) or 938.34 (7d), the school board
6 of the school district in which the pupil resided at the time of issuance of the court order shall
7 pay tuition for the pupil. A school board paying tuition for a pupil under this subsection shall
8 count the pupil as 1.0 pupil in membership for general aid under subch. II. The school board
9 shall pay each agency specified under s. 48.345 (12) (a) 2. to 4. or 938.34 (7d) (a) 2. to 4., for
10 each full-time equivalent pupil served by the agency, an amount equal to at least 80% of the
11 average per pupil cost for the school district. No state aid may be paid to the technical college
12 district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34 (7d) (a)
13 4. The school board shall pay each tribal school specified under s. 48.345 (12) (a) 5. or 938.34
14 (7d) (a) 5., for each full-time equivalent pupil served by the tribal school, an amount equal
15 to at least 80% of the average per pupil cost for the school district, less any federal aid received
16 by the tribal school for that pupil.

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. Under current law, a school board must pay an agency providing such services, other than a technical college, at least 80% of the average per pupil cost for the

school district. This is the minimum amount that must be specified in the contract between the school board and agency.

The draft specifies that, if the agency is a tribal school, the tuition payment made to the tribal school may not be less than 80% of the average per pupil cost for the school district, less any federal aid received by the tribal school for that pupil.

1 **SECTION 80.** 121.78 (4) of the statutes, as amended by this act, is repealed and recreated
2 to read:

3 121.78 (4) COURT-ORDERED EDUCATIONAL SERVICES. If a pupil is receiving educational
4 services as the result of a court order under s. 48.345 (12) or 938.34 (7d), the school board
5 of the school district in which the pupil resided at the time of issuance of the court order shall
6 pay tuition for the pupil. A school board paying tuition for a pupil under this subsection shall
7 count the pupil as 1.0 pupil in membership for general aid under subch. II. The school board
8 shall pay each agency specified under s. 48.345 (12) (a) 2. to 4. or 938.34 (7d) (a) 2. to 4., for
9 each full-time equivalent pupil served by the agency, an amount equal to at least 80% of the
10 average per pupil cost for the school district. No state aid may be paid to the technical college
11 district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34 (7d) (a)
12 4. The school board shall pay each tribal school specified under s. 48.345 (12) (a) 5. or 938.34
13 (7d) (a) 5., for each full-time equivalent pupil served by the tribal school, an amount equal
14 to at least 80% of the average per pupil cost for the school district, less any federal aid received
15 by the tribal school for that pupil and any state aid received by the tribal school for that pupil
16 under s. 115.455, as created by [WLC: 0177/1].

NOTE: In the event that the separate draft [WLC: 0177/1] is enacted and a tribal school receives state aid for the pupil under that enactment, the draft indicates that the tuition payment may not be less than 80% of the average per pupil cost for the school district, less any federal aid and state aid received by the tribal school for that pupil. The repeal and recreation of s. 121.78 (4) becomes effective only if the separate draft is enacted.

1 **SECTION 81.** 125.09 (2) (a) 2. of the statutes is amended to read:

2 125.09 (2) (a) 2. “School” means a public, school, a parochial or private school, or a
3 tribal school as defined in s. 115.001 (16) which provides an educational program for one or
4 more grades between grades 1 and 12 and which is commonly known as an elementary school,
5 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.

6 **SECTION 82.** 125.68 (3) of the statutes is amended to read:

7 125.68 (3) RESTRICTIONS ON LOCATION. No “Class A” or “Class B” license or permit may
8 be issued for premises the main entrance of which is less than 300 feet from the main entrance
9 of any public or parochial school, any tribal school as defined in s 115.001 (16), any hospital,
10 or any church, except that this prohibition may be waived by a majority vote of the governing
11 body of the municipality in which the premises is located. The distance shall be measured by
12 the shortest route along the highway from the main entrance of the school, church, or hospital
13 to the main entrance of the premises covered by the license or permit. The prohibition in this
14 subsection does not apply to any of the following:

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

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

18 (c) A restaurant located within 300 feet of a church or school. This paragraph applies
19 only to restaurants in which the sale of alcohol beverages accounts for less than 50% of their
20 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.

1 **SECTION 83.** 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
22 or treatment to an individual or handling or processing specimens of body fluids or tissues of

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

10 **SECTION 84.** 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 provide information about eye safety to tribal schools, in addition to the other entities specified in current law.

15 **SECTION 85.** 301.45 (1d) (c) of the statutes is amended to read:

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

NOTE: Amends the definition of “student” for the purpose of the sex offender registration law to also include students at a tribal educational institution, which would include tribal colleges as well as tribal schools. The registration and reporting requirements apply to state residents, persons employed or carrying on a vocation in this state, and students attending school in this state.

1 **SECTION 86.** 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 87.** 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 88.** 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 89.** 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.

1 **SECTION 90.** 447.06 (2) (a) 2. of the statutes is amended to read:

2 447.06 (2) (a) 2. For a school board or a governing body of a private school or of a tribal
3 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.

4 **SECTION 91.** 895.48 (1m) of the statutes is amended to read:

5 895.48 (1m) Any physician or athletic trainer licensed under ch. 448, chiropractor
6 licensed under ch. 446, dentist licensed under ch. 447, emergency medical technician licensed
7 under s. 146.50, first responder certified under s. 146.50 (8), physician assistant licensed under
8 ch. 448, registered nurse licensed under ch. 441, or a massage therapist or bodyworker issued
9 a certificate under ch. 460 who renders voluntary health care to a participant in an athletic
10 event or contest sponsored by a nonprofit corporation, as defined in s. 66.0129 (6) (b), a private
11 school, as defined in s. 115.001 (3r), a tribal school, as defined in s. 115.001 (16), a public
12 agency, as defined in s. 46.856 (1) (b), or a school, as defined in s. 609.655 (1) (c), is immune
13 from civil liability for his or her acts or omissions in rendering that care if all of the following
14 conditions exist:

15 (a) The health care is rendered at the site of the event or contest, during transportation
16 to a health care facility from the event or contest, or in a locker room or similar facility
17 immediately before, during or immediately after the event or contest.

18 (b) The physician, athletic trainer, chiropractor, dentist, emergency medical technician,
19 first responder, physician assistant, registered nurse, massage therapist, or bodyworker does
20 not receive compensation for the health care, other than reimbursement for expenses.

NOTE: Current law specifies, in pertinent part, that certain health care providers who render free health care at an athletic event at a private school are immune from liability for acts and omissions. The draft extends the immunity under state law if care is rendered at a tribal school's athletic event. Adding immunity under this provision also permits the health care provider who has been significantly exposed to the emergency victim to get the results of HIV tests.

1 **SECTION 92.** 895.515 (2) of the statutes is amended to read:

2 895.515 (2) Any person engaged in the sale or use of commercial equipment or
3 technology, for profit or not for profit, who donates any commercial equipment or technology
4 to a public or private elementary or secondary school, a tribal school as defined in s. 115.001
5 (16), or an institution of higher education or who accepts reimbursement in an amount not to
6 exceed overhead and transportation costs for any commercial equipment or technology
7 provided to a public or private elementary or secondary school, to a tribal school, or to an
8 institution of higher education is immune from civil liability for the death of or injury to an
9 individual caused by the commercial equipment or technology.

NOTE: Current law specifies, in pertinent part, that certain individuals who donate commercial equipment or technology to a private school are immune from civil liability under state law for death or injury caused by the donated equipment or technology. This amendment extends the immunity under state law if the donation is made to a tribal school.

10 **SECTION 93.** 938.34 (7d) of the statutes is amended to read:

11 938.34 (7d) EDUCATION PROGRAM. (a) Except as provided in par. (d), order the juvenile
12 to attend any of the following:

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

15 2. Pursuant to a contractual agreement with the school district in which the juvenile
16 resides, 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 juvenile
2 resides, an educational program provided by a private, nonprofit, nonsectarian agency that is
3 located in the school district in which the juvenile resides and that complies with 42 USC
4 2000d.

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

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

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

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

19 (d) This subsection does not apply to a juvenile who is a child with a disability, as
20 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 the provision of appropriate educational services. Also see ss. 48.345 (12) and 121.78 (4), above.

1 **SECTION 94.** 938.34 (14t) of the statutes is amended to read:

2 938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
3 ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a
4 violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance
5 included in schedule I or II under ch. 961, a controlled substance analog of a controlled
6 substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or
7 on the premises of a scattered-site public housing project, as defined in s. 961.01 (20i), while
8 in or on or otherwise within 1,000 feet of a state, county, city, village, or town park, a jail or
9 correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as
10 defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center,
11 as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000
12 feet of any private or public school premises or of any premises of a tribal school as defined
13 in s. 115.001 (16) or while in or on or otherwise within 1,000 feet of a school bus, as defined
14 in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a
15 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 impose 100 hours of community service work for a public agency or a nonprofit charitable organization in addition to other penalties the court imposes. The draft specifies that the penalty enhancement also applies for possession on or within 1,000 feet of the premises of a tribal school.

16 **SECTION 95.** 938.342 (1r) of the statutes is amended to read:

1 938.342 **(1r)** If school attendance under sub. (1d) (a) or (1g) (g) is a condition of an order
2 under sub. (1d) or (1g), the order shall specify what constitutes a violation of the condition and
3 shall direct the school board of the school district, or the governing body of the private school,
4 in which the person is enrolled or shall request the governing body of the tribal school as
5 defined in s. 115.001 (16) in which the person is enrolled to notify the court or, if the person
6 is under the supervision of an agency under sub. (1g) (j), the agency that is responsible for
7 supervising the person within 5 days after any violation of the condition by the person.

NOTE: 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, current law requires the court to order the school board or the governing body of a private school to notify the court within 5 days of a violation of this condition. The draft requires that the court order request that a tribal school do so.

8 **SECTION 96.** 938.355 (2) (c) of the statutes is amended to read:

9 938.355 **(2)** (c) If school attendance is a condition of an order under par. (b) 7., the order
10 shall specify what constitutes a violation of the condition and shall direct the school board of
11 the school district, or the governing body of the private school, in which the juvenile is enrolled
12 or shall request the governing body of the tribal school as defined in s. 115.001 (16) in which
13 the juvenile is enrolled to notify the county department that is responsible for supervising the
14 juvenile within 5 days after any violation of the condition by the juvenile.

NOTE: Under s. 938.355 (2) (b) 7., stats., a delinquency or JIPS dispositional order may state the conditions with which the juvenile must comply. If school attendance is a condition, current law requires that the order direct the school board or the governing body of a private school to notify the court within 5 days of a violation of this condition. The draft requires that the court order request that a tribal school do so.

15 **SECTION 97.** 938.396 (1), (1m), (1p), and (7) of the statutes are amended to read:

1 **938.396 Records.** (1) Law enforcement officers' records of juveniles shall be kept
2 separate from records of adults. Law enforcement officers' records of juveniles shall not be
3 open to inspection or their contents disclosed except under sub. (1b), (1d), (1g), (1m), (1r),
4 (1t), (1x), or (5) or s. 938.293 or by order of the court. This subsection does not apply to
5 representatives of the news media who wish to obtain information for the purpose of reporting
6 news without revealing the identity of the juvenile involved, to the confidential exchange of
7 information between the police and officials of the school attended by the juvenile or other
8 law enforcement or social welfare agencies or to juveniles 10 years of age or older who are
9 subject to the jurisdiction of the court of criminal jurisdiction. A public school official who
10 obtains information under this subsection shall keep the information confidential as required
11 under s. 118.125, and a private school official who obtains information under this subsection
12 shall keep the information confidential in the same manner as is required of a public school
13 official under s. 118.125. This subsection does not apply to the confidential exchange of
14 information between the police and officials of the tribal school as defined in s. 115.001 (16)
15 attended by the juvenile if enforceable protections are provided by a tribal school policy or
16 tribal law that requires tribal school officials to keep the information confidential in at least
17 the same manner as is required of a public school official under s. 118.125. A law enforcement
18 agency that obtains information under this subsection shall keep the information confidential
19 as required under this subsection and s. 48.396 (1). A social welfare agency that obtains
20 information under this subsection shall keep the information confidential as required under
21 ss. 48.78 and 938.78.

NOTE: Current law provides that the subsection which specifies that, subject to certain exceptions, law enforcement records relating to juveniles under ch. 938, stats. (juvenile justice code), are confidential does not apply to the confidential exchange of information between the police and school officials. Current law further requires that public

school officials who obtain information under this provision keep the information confidential as required in s. 118.125, stats. (relating to the confidentiality of pupil records). Current law also requires that private school officials who obtain information under this provision keep the information confidential in the same manner as is required of a public school official.

The draft permits the police to confidentially exchange information with tribal school officials if a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in at least the same manner as is required of public and private school officials.

1 **(1m)** (a) A law enforcement agency, on its own initiative or on the request of the school
 2 district administrator of a public school district, the administrator of a private school, or the
 3 administrator of a tribal school as defined in s. 115.001 (16) or the designee of the school
 4 district administrator ~~or the~~, private school administrator, or tribal school administrator may,
 5 subject to official agency policy, provide to the school district administrator, private school
 6 administrator, or tribal school administrator or designee any information in its records relating
 7 to the use, possession, or distribution of alcohol or a controlled substance or controlled
 8 substance analog by a juvenile enrolled in the public school district ~~or~~, private school, or tribal
 9 school. The information shall be used by the school district or private school as provided
 10 under s. 118.127 (2). The official agency policy shall specify that such information may not
 11 be provided to the administrator of a tribal school or the tribal school administrator's designee
 12 unless the governing body of the tribal school agrees that the information will be used by the
 13 tribal school as provided under s. 118.127 (2).

14 (am) 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,

1 subject to official agency policy, provide to the school district administrator, private school
2 administrator, or tribal school administrator or designee any information in its records relating
3 to the illegal possession by a juvenile of a dangerous weapon, as defined in s. 939.22 (10).
4 The information shall be used by the school district or private school as provided in s. 118.127
5 (2). The official agency policy shall specify that such information may not be provided to the
6 administrator of a tribal school or the tribal school administrator's designee unless the
7 governing body of the tribal school agrees that the information will be used by the tribal school
8 as provided under s. 118.127 (2).

9 (ar) A law enforcement agency, on its own initiative or on the request of the school
10 district administrator of a public school district, the administrator of a private school, or the
11 administrator of a tribal school as defined in s. 115.001 (16), or the designee of the school
12 district administrator ~~or the~~, private school administrator, or tribal school administrator, may,
13 subject to official agency policy, provide to the school district administrator, private school
14 administrator, or tribal school administrator, or designee, any information in its records
15 relating to an act for which a juvenile enrolled in the school district ~~or~~, private school, or tribal
16 school was taken into custody under s. 938.19 based on a law enforcement officer's belief that
17 the juvenile was committing or had committed a violation of any state or federal criminal law.
18 The information shall be used by the school district or private school as provided in s. 118.127
19 (2). The official agency policy shall specify that such information may not be provided to the
20 administrator of a tribal school or the tribal school administrator's designee unless the
21 governing body of the tribal school agrees that the information will be used by the tribal school
22 as provided under s. 118.127 (2).

23 (b) A law enforcement agency, on its own initiative or on the request of the school
24 district administrator of a public school district, the administrator of a private school, or the

1 administrator of a tribal school as defined in s. 115.001 (16) or the designee of the school
2 district administrator ~~or the~~ private school administrator, or tribal school administrator, may,
3 subject to official agency policy, provide to the school district administrator, private school
4 administrator, tribal school administrator, or designee any information in its records relating
5 to the act for which a juvenile enrolled in the public school district ~~or~~ private school, or tribal
6 school was adjudged delinquent. The information shall be used by the school district or
7 private school as provided in s. 118.127 (2). The official agency policy shall specify that such
8 information may not be provided to the administrator of a tribal school or the tribal school
9 administrator's designee unless the governing body of the tribal school agrees that the
10 information will be used by the tribal school as provided under s. 118.127 (2).

11 (c) On petition of a law enforcement agency to review pupil records, as defined in s.
12 118.125 (1) (d), other than pupil records that may be disclosed without a court order under s.
13 118.125 (2) or (2m), for the purpose of investigating alleged delinquent or criminal activity,
14 the court may order the school board of the school district, or the governing body of the private
15 school, in which a juvenile is enrolled to disclose to the law enforcement agency the pupil
16 records of that juvenile as necessary for the law enforcement agency to pursue its
17 investigation. The court may request that the governing body of the tribal school in which a
18 juvenile is enrolled disclose to the law enforcement agency the pupil records of that juvenile
19 as necessary for the law enforcement agency to pursue its investigation. The law enforcement
20 agency may use the pupil records only for the purpose of its investigation and may make the
21 pupil records available only to employees of the law enforcement agency who are working
22 on the investigation.

23 (d) On petition of a fire investigator under s. 165.55 (15) to review pupil records, as
24 defined in s. 118.125 (1) (d), other than pupils records that may be disclosed without a court

1 order under s. 118.125 (2) or (2m), for the purpose of an investigation under s. 165.55, the court
2 may order the school board of the school district in which a juvenile is enrolled to disclose to
3 the fire investigator the pupil records of that juvenile as necessary for the fire investigator to
4 pursue his or her investigation. The fire investigator may use the pupil records only for the
5 purpose of pursuing his or her investigation and may make the pupil records available only
6 to employees of the fire investigator who are working on the investigation.

7 **(1p)** A law enforcement agency may enter into an interagency agreement with a school
8 board, a private school, a tribal school as defined in s. 115.001 (16), a social welfare agency,
9 or another law enforcement agency providing for the routine disclosure of information under
10 subs. (1) and (1m) to the school board, private school, tribal school, social welfare agency, or
11 other law enforcement agency.

NOTE: A law enforcement agency may, on its own initiative, or on the request of a public or private school, disclose certain information to the public or private school. The school is then required to use the information as provided in s. 118.127 (2), which generally prohibits disclosure except to certain individuals. The law enforcement agency may do so only subject to official agency policy. The draft permits a law enforcement agency to also disclose information to a tribal school but requires that the law enforcement agency policy specify that the law enforcement agency cannot provide information to a tribal school unless the governing body of the tribal school agrees that the information will be used by the tribal school in the same manner as public and private schools as provided under s. 118.127 (2)., above.

The draft also permits a law enforcement agency to enter into an interagency agreement with a tribal school to disclose information under s. 938.396 (1) and (1m).

12 **(7)** (a) Notwithstanding sub. (2) (a), if a petition under s. 938.12 or 938.13 (12) is filed
13 alleging that a juvenile has committed a delinquent act that would be a felony if committed
14 by an adult, the court clerk shall notify the school board of the school district, ~~or~~ the governing
15 body of the private school, or the governing body of the tribal school in which the juvenile is

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

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

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

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

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

22 (c) No information from the juvenile's court records, other than information disclosed
23 under par. (a), (am), (ar), (b), or (bm), may be disclosed to the school board of the school
24 district, ~~or~~ the governing body of the private school, or the governing body of a tribal school

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

1 school, or tribal school, or its agent acted with gross negligence or with reckless, wanton, or
2 intentional misconduct in failing to disclose the information.

NOTE: Under current law, juvenile court records relating to ch. 938 proceedings are confidential unless an exception is specified in the statutes. Those exceptions include a requirement that the clerk of juvenile court notify the school board of the school district or the governing body of a private school, or their designee, of certain matters relating to a juvenile delinquency or JIPS proceeding or adjudication. The draft additionally requires that the clerk notify the governing body of a tribal school, or its designee, of those matters.

Current law requires that the school board or governing body of a private school disclose this information to employees who work directly with the juvenile or who have been determined by the governing body, or its designee, to have legitimate educational interests, including safety interests in the information. Current law prohibits the employee from further disclosing this information. The draft requires the court to request that the governing body of a tribal school, or its designee, disclose the information to those employees and request that the governing body prohibit those employees from further disclosing the information. The draft extends the immunity protections under state law to employees of the tribal school.

Extending the immunity protections to employees of the tribal school does not affect whatever right tribal school employees have to raise a defense of tribal sovereign immunity if sued for redisclosure of the information.

3 **SECTION 98.** 938.78 (2) (b) of the statutes is amended to read:

4 938.78 (2) (b) 1. Paragraph (a) does not apply to the confidential exchange of
5 information between an agency and another social welfare agency, a law enforcement agency,
6 the victim-witness coordinator, a fire investigator under s. 165.55 (15), a public school
7 district, or a private school regarding an individual in the care or legal custody of the agency.
8 A social welfare agency that obtains information under this paragraph shall keep the
9 information confidential as required under this section and s. 48.78. A law enforcement
10 agency that obtains information under this paragraph shall keep the information confidential
11 as required under ss. 48.396 (1) and 938.396 (1). A public school that obtains information

1 under this paragraph shall keep the information confidential as required under s. 118.125, and
2 a private school that obtains information under this paragraph shall keep the information
3 confidential in the same manner as is required of a public school under s. 118.125. Paragraph
4 (a) does not apply to the confidential exchange of information between an agency and officials
5 of a tribal school as defined in s. 115.001 (16) regarding an individual in the care or legal
6 custody of the agency if enforceable protections are provided by a tribal school policy or tribal
7 law that requires tribal school officials to keep the information confidential in at least the same
8 manner as is required of a public school official under s. 118.125.

9 1m. An agency may enter into an interagency agreement with a school board, a private
10 school, a tribal school, a law enforcement agency, or another social welfare agency providing
11 for the routine disclosure of information under subd. 1. to the school board, private school,
12 tribal school, law enforcement agency, or other social welfare agency.

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

The draft permits an agency to confidentially exchange information with a tribal school if a tribal school policy or tribal law provides enforceable protections that require tribal school officials to keep the information confidential in the same manner required of public and private school officials. The draft also permits interagency agreements for the disclosure of information to include tribal schools and permits the court to request a tribal school to disclose information necessary for the agency to provide care and treatment.

1 **SECTION 99.** 939.632 (1) (a) and (d) 3. of the statutes are amended to read:

2 939.632 (1) (a) “School” means a public, a 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. The draft adds tribal schools to the definition of a “school” for the purpose of the penalty enhancement.

8 **SECTION 100.** 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).

1 **SECTION 101.** 948.095 (1) (a) of the statutes is amended to read:

2 948.095 (1) (a) “School” means a public or private elementary or secondary school or
3 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.) The draft adds tribal schools to the definition of “school” for this purpose.

4 **SECTION 102.** 948.11 (4) (b) 2. of the statutes is amended to read:

5 948.11 (4) (b) 2. A private school, as defined in s. 115.001 (3r), or a tribal school, as
6 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).

7 **SECTION 103.** 948.50 (2) (a) of the statutes is amended to read:

8 948.50 (2) (a) “School” means a public school, a parochial or private school, or a tribal
9 school as defined in s. 115.001 (16) which provides an educational program for one or more
10 grades between kindergarten and grade 12 and which is commonly known as a kindergarten,
11 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. The draft adds tribal schools to the definition of school for this purpose. (Section 118.32, stats. (prohibiting strip searches), refers to schools without further definition, and the definition is supplied by s. 948.50.)

12 **SECTION 104.** 948.61 (1) (b) of the statutes is amended to read:

1 948.61 (1) (b) “School” means a public school, a parochial or private school, or a tribal
2 school as defined in s. 115.001 (16) which provides an educational program for one or more
3 grades between grades 1 and 12 and which is commonly known as an elementary school,
4 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. The draft adds tribal schools to the definition of “school” for both of these statutes inasmuch as 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.

5 **SECTION 105.** 961.49 (2) (f) of the statutes is amended to read:

6 961.49 (2) (f) Any private or public school premises and any premises of a tribal school
7 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. The draft specifies that possession on or within 1,000 feet of the premises of a tribal school is included in that crime.

8 **SECTION 106.** 961.495 of the statutes is amended to read:

9 **961.495 Possession or attempted possession of a controlled substance on or near**
10 **certain places.** If any person violates s. 961.41 (3g) by possessing or attempting to possess
11 a controlled substance included in schedule I or II, a controlled substance analog of a
12 controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on
13 the premises of a scattered-site public housing project, while in or on or otherwise within
14 1,000 feet of a state, county, city, village, or town park, a jail or correctional facility, a multiunit
15 public housing project, a swimming pool open to members of the public, a youth center or a

1 community center, while in or on or otherwise within 1,000 feet of any private or public school
2 premises or of any premises of a tribal school as defined in s. 115.001 (16) or while in or on
3 or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in
4 addition to any other penalties that may apply to the crime, impose 100 hours of community
5 service work for a public agency or a nonprofit charitable organization. The court shall ensure
6 that the defendant is provided a written statement of the terms of the community service order
7 and that the community service order is monitored. Any organization or agency acting in good
8 faith to which a defendant is assigned pursuant to an order under this section has immunity
9 from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the
10 defendant.

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

11 **SECTION 107. Initial applicability.** (1) The treatment of sections 15.377 (4) (f) and (8)
12 (c) 14. and 15.57 (3) first applies to appointments made on the effective date of this subsection.

13 (2) The treatment of section 45.396 (2) first applies to courses completed after the
14 effective date of this subsection.

15 (3) The treatment of sections 48.345 (12) (a) 5., 48.355 (2) (c), 938.34 (7d) (a) 5.,
16 938.342 (1r), 938.355 (2) (c), and 938.396 (7) (am), (ar), (b), (bm), and (c) first applies to
17 dispositional orders entered on the effective date of this subsection.

18 **SECTION 108. Effective dates.** This act takes effect on the day after publication, except
19 as follows:

