

**2019 DRAFTING REQUEST**

**Bill**

For: **Legislative Council - other 504-5721** Drafter: **ewheeler**  
 By: **David Moore** Secondary Drafters:  
 Date: **9/26/2018** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **David.Moore@legis.wisconsin.gov**  
 Carbon copy (CC) to: **melinda.johns@legis.wisconsin.gov**  
**Elizabeth.Wheeler@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Battery or threat to tribal attorney in family law proceedings

**Instructions:**

Add tribal attorneys and tribal proceedings to s. 940.203 (3).

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 9/28/2018	eweiss 10/1/2018			
/P1	ewheeler 10/2/2018	eweiss 10/3/2018	lparisi 10/1/2018		Crime
/P2	ewheeler 11/2/2018	eweiss 11/6/2018	dwalker 10/3/2018		Crime
/P3	ewheeler 11/7/2018	eweiss 11/8/2018	dwalker 11/6/2018		Crime
/P4			mbarman		Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			lparisi 11/8/2018 12/3/2018	mbarman 3/6/2019	Crime

FE Sent For:

<END>

*Not Needed*

9/26/18

**WISCONSIN LEGISLATIVE REFERENCE BUREAU**

Information Services 608-266-0341—Legal Services 608-266-3561



David Moore - Leg Council

Tribal courts: Under s. 940.203 as amended by 2017 Act 272  
- use "analogous proceeding" under tribal court

Professionals:

Individual representing the interests of the child  
" of the tribe

James H. Schlender Jr.  
Chief Judge

William J. Trepanier  
Court Director/  
Magistrate



Susie J. Taylor  
Clerk of Court

Teshena LaRonge  
Court Assistant

Patricia R. Harrington  
Deputy Clerk of Court

### MEMORANDUM

Date: August 15, 2018  
To: Tribal Governing Board  
From: James H. Schlender Jr., Chief Judge  
Re: WI Stat 904.203, Battery to Court Personnel

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Wisconsin Statute 940.203, recently amended under 2017 Wisconsin Act 352, to provide state protection for tribal court officials. The amendment under Act 352, which extended state prosecutorial authority for offenders who committed crimes against Tribal Court Officials, was greatly appreciated by the various tribal judiciaries located and operating within the State of Wisconsin. Prior to the amendment, there was direct method for State authorities to prosecute criminal conduct perpetrated against tribally-appointed judges and law enforcement officers. Similar protection existed for decades for the state-appointed counterparts (judges, law enforcement, justices, etc...)

However, I would recommend an amendment to the amendment to better protect the operations of Tribal Courts. The need for the protection for *court officials* is the due to the nature of the business conducted in their respective Courts. Judges preside over contentious issues relating to freedom, liberty, family matters and other conduct that involves controversy, this work has led to violence being perpetuated against judges and court officers. This violence warrants protection for court personnel/participants. The protection of the statute should be extended to *all* court participants for *all* circuit or tribal court proceedings. The participants for court proceedings usually involve government workers who are compelled to participate by virtue of their office; this includes court clerks, court reporters, social workers, child support staff, bailiffs, housing staff, and other government-employed staff that are required to be present, present testimony or other such evidence in such controversial matters before the court.

My recommendations for the amendment for WI Stat 940.203:

Lac Courte Oreilles Tribal Court  
13394W. Trepania Road  
Hayward, WI 54843  
(715) 634-8934

Under Section (1):

Add (e) "Court Staff" means a person who is currently or formerly was any of the following:

1. Director of a social work department, Social worker, case worker assigned to a case under circuit or tribal court jurisdiction.
2. Court Administrator. Clerk of court, court reporter, bailiff, or court assistant for a circuit or tribal court.
3. A government employee, who is required to participate in circuit or tribal court proceedings as a function of their job function.

Add (f) "Tribe" or "tribal" means a federally-recognized American Indian tribe located with the political boundaries of the State of Wisconsin.

Under section (2)

(2) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of any judge, prosecutor, law enforcement officer **or Court Staff** under all of the following circumstances is guilty of a Class H felony:

- (a) At the time of the act or threat, the actor knows or should have known that the victim is a judge, prosecutor, or law enforcement officer, **or Court Staff** or a member of the judge's, prosecutor's, or law enforcement officer's family.
- (b) The act or threat is in response to any action taken by a judge, prosecutor, law enforcement officer, **or Court Staff** in an official capacity.
- (c) There is no consent by the person harmed or threatened.

Under Section (3)

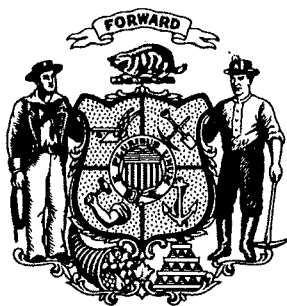
(3) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of a current or former guardian ad litem, corporation counsel, attorney, or Court Staff under all of the following circumstances is guilty of a Class H felony:

- (a) At the time of the act or threat, the actor knows or should have known that the victim is a current or former guardian ad litem, corporation counsel, attorney, or Court Staff or a member of the current or former guardian ad litem's, corporation counsel's, attorney's, or Court Staff's family.

(b) The act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, attorney, or Court Staff in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938; or under same or similar proceedings under the Tribe's code.

(c) There is no consent by the person harmed or threatened.

# State of Wisconsin



2017 Assembly Bill 825

Date of enactment: April 11, 2018  
Date of publication\*: April 12, 2018

## 2017 WISCONSIN ACT 272

AN ACT to renumber 940.203 (1) (a); to amend 940.203 (title); and to create 940.203 (1) (ac) and 940.203 (3) of the statutes; relating to: battery of an officer of the court and providing a criminal penalty.

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

SECTION 1. 940.203 (title) of the statutes is amended to read:

**940.203 (title) Battery or threat to judge, prosecutor, an officer of the court or law enforcement officer.**

SECTION 2. 940.203 (1) (a) of the statutes is renumbered 940.203 (1) (am).

SECTION 3. 940.203 (1) (ac) of the statutes is created to read:

940.203 (1) (ac) "Attorney" means a legal professional practicing law, as defined in SCR 23.01.

SECTION 4. 940.203 (3) of the statutes is created to read:

940.203 (3) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of a current or former guardian ad litem, corporation counsel, or attorney under all of the following circumstances is guilty of a Class H felony:

(a) At the time of the act or threat, the actor knows or should have known that the victim is a current or former guardian ad litem, corporation counsel, or attorney, or a member of the current or former guardian ad litem's, corporation counsel's, or attorney's family.

(b) The act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938.

(c) There is no consent by the person harmed or threatened.

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

## Menominee Indian Tribe of Wisconsin

### Legal Services Department

#### Memorandum

**To:** Gary Besaw, Tribal Legislator  
**From:** John Wilhelmi, Tribal Attorney – Gaming Emphasis  
**Date:** September 4, 2018  
**Re:** Wisconsin Senate Bill 694 – Battery to an Officer of the Court

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Senate Bill 694, as currently drafted, would not provide protections to attorneys acting in Menominee Tribal Court proceedings. The Bill would make it a Class H felony under Wisconsin criminal law for persons committing or threatening battery to certain officers of the court, but only if:

“The act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938.”<sup>1</sup>

Proceedings in Menominee Tribal court involving child protective services, mental commitments, family law, guardianships, delinquency proceedings, etc., that in the State constitute proceedings under ch. 48, 51, 54, 55, 767, 813, or 938, are conducted pursuant to Tribal law, not Wisconsin statute.<sup>2</sup> As an example, a battery of a Tribal attorney in response to that attorney prosecuting a Child in Need of Protection or Services petition in Tribal Court would not violate Senate Bill 694, because that proceeding would be under Tribal law, not Chapter 48.

If the Legislature wished to bring Tribal attorneys, guardian ad litem, etc. under the protections of Senate Bill 694, they may wish to consider an amendment similar to the following:

The act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938, or, in regard to Tribal court proceedings, under applicable Tribal law similar to ch. 48, 51, 54, 767, 813, or 938.<sup>3</sup>

Although the State’s criminal laws are not applicable to acts committed by Indians on the Menominee Reservation, Senate Bill 694, if amended to cover Tribal Court proceedings, would still impact the Menominee Tribe in the following ways:

- A battery or threat of battery to a Tribal Court Officer could take place off the Menominee Reservation. Acts taken off the Reservation are subject to Wisconsin’s criminal statutes;

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<sup>1</sup> Senate Bill 694, Section 4, Lines 14-16 creating § 940.203(3), Wis. Stats.

<sup>2</sup> This is true even if the Tribe has adopted certain Wisconsin statutes to govern its proceedings. Such proceedings are conducted under the Tribal law that adopted Wisconsin statutes, not directly under the Wisconsin statute.



- A battery or threat of battery to a Tribal Court Officer who is non-Indian where the perpetrator is also non-Indian would subject that non-Indian perpetrator to the State's criminal jurisdiction even if the act took place on the Reservation;
- If the Tribal Court officer is Indian and the perpetrator is a non-Indian, the federal government would have criminal jurisdiction over the perpetrator pursuant to the General Crimes Act (18 U.S.C. § 1152) and the Assimilative Crimes Act (18 U.S.C. § 13) which in effect incorporates state criminal law where there is no federal law;
- If the Tribal Court officer is non-Indian and the perpetrator is Indian, the federal government could have criminal jurisdiction over the perpetrator pursuant to the General Crimes Act (18 U.S.C. s. 1152) and the Assimilative Crimes Act (18 U.S.C. s 13) if the Tribe has not already prosecuted.

Thank you for the changes that were made to Wisconsin Statute section 904.203. As a tribal court judge who received a threat to cause bodily harm prior to the 2017 Wisconsin Act 272, the legislative changes are much appreciated.

Regarding battery or threat to an officer of a tribal court, I would first like to explain the officers that either work in or come before the tribal court.

- Court Administrator and Administrative Assistants.
- Court Clerks.
- Court Security (non-law enforcement).
- Tribal Law Office (comparable to Corporation Counsel).
- Guardians ad litem (some are licensed attorneys but most are community members that have been certified after going through a 3-day training session).

I recommend additional revisions to Wisconsin Statute section 904.203, including:

1. As many tribes have created their own laws as opposed to adopting the State of Wisconsin's version of the Children's Code; Juvenile Justice Code; Alcohol, Drug Abuse, Developmental Disabilities and Mental Health Act; guardianship/conservatorship law; protective service law; or family law, I recommend that Wis. Stat. §940.203(3)(b) be amended as follows (emphasis added):  
"The act or threat is in response to an action taken by the current or former guardian ad litem, corporation, counsel, or attorney in his or her official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, 938, **or a comparable tribal court proceeding.**"
2. "Guardian ad litem" could be defined to include both an attorney appointed to serve in that role in state court and an individual appointed to serve in that role in tribal court.
  - a. A guardian ad litem in state court must be a legal professional practicing law. The same requirement is not present in most tribal courts.
3. "Attorney" could be defined as "a legal professional practicing law, as defined in SCR 23.01, in either state or tribal court."
  - a. The Nation's version of corporation counsel (the law office for the county) is the Oneida Law Office. If the definition of attorney were amended, then the Law Office attorneys would fit under that definition and we would not have to add a tribal law office as a separate entity along with corporation counsel.
4. I would like to see a definition of "court staff" added and then insert that class of individuals into Wis. Stat. §940.203(3).
  - a. The definition could include: Registers in Probate, Office Managers, Court Administrators, Court Clerks, Court Security, and other administrative staff in both state and tribal courts.
  - b. These individuals are typically on the front line dealing with clients, some of who are upset due to the circumstances involving their case.

Thank you again for your work on this issue.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0388? <sup>PI</sup>  
EAW: <sup>T</sup>  
emw

In: 9/28  
Due: 10/11

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SAV ✓  
KVP ✓  
PWF ✓

Gen ✓

**AN ACT** <sup>Gen ✓</sup>; **relating to:** battery or threat to an officer of the court in a tribal proceeding and providing a penalty. ✓

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

This bill makes it a Class H felony to intentionally cause or threaten to cause bodily harm to an attorney, an individual representing the interests of a child, or an individual representing the interests of a tribe, or a family member of such an individual, if the harm or threat is in response to an action taken by that attorney or individual in his or her official capacity in a proceeding under tribal law relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family. Under current law, an identical crime already exists for harming or threatening to harm an attorney, guardian ad litem, or corporation counsel who is representing someone in a similar proceeding in state court. ✓

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

**SECTION 1.** 940.203 (3) (intro) <sup>x</sup> of the statutes is amended to read:

940.203 (3) (intro.) Whoever intentionally causes bodily harm or threatens to cause bodily harm to the person or family member of a current or former guardian

INS  
1-3

*advocate,*  
 ad litem, corporation counsel, individual representing the interests of the child or the  
tribe in a tribal proceeding, or attorney under all of the following circumstances is  
 guilty of a Class H felony:

History: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28; 2015 a. 78; 2017 a. 272, 352.

**SECTION 2.** 940.203 (3) (a) of the statutes is amended to read:

940.203 (3) (a) At the time of the act or threat, the actor knows or should have  
 known that the victim is a current or former guardian ad litem, corporation counsel,  
individual representing the interests of the child or the tribe in a tribal proceeding,  
 or attorney, or a member of the current or former guardian ad litem's, corporation  
 counsel's, individual representing the interests of the child or the tribe in a tribal  
proceeding, or attorney's family. *advocate's,*

History: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28; 2015 a. 78; 2017 a. 272, 352.

**SECTION 3.** 940.203 (3) (b) of the statutes is amended to read:

940.203 (3) (b) The act or threat is in response to an action taken by the current  
 or former guardian ad litem, corporation counsel, individual representing the  
interests of the child or the tribe in a tribal proceeding, or attorney in his or her  
 official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938, or in an  
analogous proceeding in a tribal court. *advocate,*

History: 1993 a. 50, 446; 2001 a. 61, 109; 2009 a. 28; 2015 a. 78; 2017 a. 272, 352.

(END)

**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0388/Plins  
EAW:...

INS 1-3

**SECTION 1.** 940.203 (1) (ab) of the statutes is created to read:

940.203 (1) (ab) "Advocate" means an individual who is representing the interests of <sup>ea</sup>the child or the tribe in a tribal proceeding.



David from Leg Council

10/02/18

19-0388 - 2 Small changes

p.2., line 2. - tribal court proceeding

Line 16-17 - remove "an analogous" - "a similar" <sup>replace w/</sup>



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0388/P1  
EAW:emw

IN: 10/02  
due: 10/02 or 10/03

P2

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

JAV  
XROD J  
PWF J

Regen.

1 AN ACT *to amend* 940.203 (3) (intro.), 940.203 (3) (a) and 940.203 (3) (b); and *to*  
2 *create* 940.203 (1) (ab) of the statutes; **relating to:** battery or threat to an  
3 officer of the court in a tribal proceeding and providing a penalty.

---

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

Court

This bill makes it a Class H felony to intentionally cause or threaten to cause bodily harm to an attorney, an individual representing the interests of a child, or an individual representing the interests of a tribe, or a family member of such an individual, if the harm or threat is in response to an action taken by that attorney or individual in his or her official capacity in a proceeding under tribal law relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family. Under current law, an identical crime already exists for harming or threatening to harm an attorney, guardian ad litem, or corporation counsel who is representing someone in a similar proceeding in state court.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

4 SECTION 1. 940.203 (1) (ab) of the statutes is created to read:

1 940.203 (1) (ab) "Advocate" means an individual who is representing the  
2 interests of a child or the tribe in a tribal <sup>Court</sup> proceeding.

3 SECTION 2. 940.203 (3) (intro.) of the statutes is amended to read:

4 940.203 (3) (intro.) Whoever intentionally causes bodily harm or threatens to  
5 cause bodily harm to the person or family member of a current or former guardian  
6 ad litem, corporation counsel, advocate, or attorney under all of the following  
7 circumstances is guilty of a Class H felony:

8 SECTION 3. 940.203 (3) (a) of the statutes is amended to read:

9 940.203 (3) (a) At the time of the act or threat, the actor knows or should have  
10 known that the victim is a current or former guardian ad litem, corporation counsel,  
11 advocate, or attorney, or a member of the current or former guardian ad litem's,  
12 corporation counsel's, advocate's, or attorney's family.

13 SECTION 4. 940.203 (3) (b) of the statutes is amended to read:

14 940.203 (3) (b) The act or threat is in response to an action taken by the current  
15 or former guardian ad litem, corporation counsel, advocate, or attorney in his or her  
16 official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938 or in an

17 analogous proceeding in a tribal court.

18 (END)

a similar



## Wheeler, Elizabeth

---

**From:** Moore, David  
**Sent:** Wednesday, October 31, 2018 2:19 PM  
**To:** Wheeler, Elizabeth  
**Subject:** FW: Special Committee on State-Tribal Relations

Hi Elizabeth,

Would you please revise LRB-0388/p2 in accordance with John Wilhelmi's suggestion below?

Thanks,  
David

---

**From:** John Wilhelmi <jwilhelmi@mitw.org>  
**Sent:** Tuesday, October 09, 2018 3:34 PM  
**To:** Moore, David <David.Moore@legis.wisconsin.gov>; Robert J. Collins <rcollins@oneidanation.org>; James.schlenderjr@lco-nsn.gov; Gary Besaw <gbesaw@mitw.org>  
**Cc:** Tana D. Aguirre <taguirre@oneidanation.org>; forbes@wis-gps.com; jstrohl66@gmail.com; Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>  
**Subject:** RE: Special Committee on State-Tribal Relations

David,

My only suggestion would be to possibly change the definition of advocate to: "Advocate means an individual who is representing the interests of a child, the tribe, or other party in a tribal court proceeding."

This definition would capture lay advocates (i.e. non-attorneys providing legal representation) who represent parents, guardians, or any other person who might legitimately be a party in the type of proceedings covered. Normally those persons would be covered by the term "attorney" but because in Menominee Tribal Court we have non-attorney legal advocates, they would not be covered under the current definition.

John

---

**From:** Moore, David <David.Moore@legis.wisconsin.gov>  
**Sent:** Tuesday, October 9, 2018 2:08 PM  
**To:** Robert J. Collins <rcollins@oneidanation.org>; John Wilhelmi <jwilhelmi@mitw.org>; James.schlenderjr@lco-nsn.gov; Gary Besaw <gbesaw@mitw.org>  
**Cc:** Tana D. Aguirre <taguirre@oneidanation.org>; forbes@wis-gps.com; jstrohl66@gmail.com; Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>  
**Subject:** RE: Special Committee on State-Tribal Relations

All,

Please see the attached preliminary bill draft on the battery to an officer of the court topic that was discussed at the last State-Tribal Relations Committee meeting. The committee will discuss the draft tomorrow.

Note that this is a preliminary bill draft; if committee members conclude it does not adequately accomplish their goals, they may request a revised bill draft for the next committee meeting. Please also note that there was some suggestion

that the definition of attorney might need to be changed. It appears to me that the current definition would encompass attorneys practicing in tribal courts. Accordingly, this draft does not provide a different definition of attorney.

If you have any comments or suggestions, please feel free to call or e-mail.

Sincerely,  
David

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**From:** Robert J. Collins <[rcollins@oneidanation.org](mailto:rcollins@oneidanation.org)>  
**Sent:** Thursday, September 06, 2018 11:52 AM  
**To:** [jwilhelmi@mitw.org](mailto:jwilhelmi@mitw.org); [James.schlenderjr@lco-nsn.gov](mailto:James.schlenderjr@lco-nsn.gov); Gary Besaw <[gbesaw@mitw.org](mailto:gbesaw@mitw.org)>  
**Cc:** Tana D. Aguirre <[taguirre@oneidanation.org](mailto:taguirre@oneidanation.org)>; [forbes@wis-gps.com](mailto:forbes@wis-gps.com); [jstrohl66@gmail.com](mailto:jstrohl66@gmail.com); Moore, David <[David.Moore@legis.wisconsin.gov](mailto:David.Moore@legis.wisconsin.gov)>; Snyder, Rachel <[Rachel.Snyder@legis.wisconsin.gov](mailto:Rachel.Snyder@legis.wisconsin.gov)>  
**Subject:** RE: Special Committee on State-Tribal Relations

Good morning,

Here is the outline that I put together for my portion of next week's presentation.

Robert J. Collins II  
Family Court Judge  
Oneida Judiciary  
2630 W. Mason Street  
P.O. Box 19  
Oneida, WI 54155  
Tel. (920) 496-7200  
Fax (920) 496-7229

---

**From:** Snyder, Rachel [<mailto:Rachel.Snyder@legis.wisconsin.gov>]  
**Sent:** Thursday, September 6, 2018 11:08 AM  
**To:** [jwilhelmi@mitw.org](mailto:jwilhelmi@mitw.org); Robert J. Collins <[rcollins@oneidanation.org](mailto:rcollins@oneidanation.org)>; [James.schlenderjr@lco-nsn.gov](mailto:James.schlenderjr@lco-nsn.gov); Gary Besaw <[gbesaw@mitw.org](mailto:gbesaw@mitw.org)>  
**Cc:** Tana D. Aguirre <[taguirre@oneidanation.org](mailto:taguirre@oneidanation.org)>; [jstrohl66@gmail.com](mailto:jstrohl66@gmail.com); [forbes@wis-gps.com](mailto:forbes@wis-gps.com); Moore, David <[David.Moore@legis.wisconsin.gov](mailto:David.Moore@legis.wisconsin.gov)>  
**Subject:** Special Committee on State-Tribal Relations

Good morning.

Thank you for volunteering to speak with the Special Committee on State-Tribal Relations regarding the issue of battery to a tribal court officer. The preliminary agenda for the meeting and a memo describing the enacted legislation from the last interim are available on the committee's [website](#).

To provide the committee with a better understanding about how the law may be changed to ensure that tribal court officers are included in the protections granted to other court officers under state law, we are planning to have a panel consisting of the following individuals:

- Judge Robert Collins, Oneida Judiciary.
- Judge James Schlender, Lac Courte Oreilles Tribal Court.

- John Wilhelmi, Attorney, Menominee Indian Tribe of Wisconsin.
- Gary Besaw, Tribal Legislator, Menominee Indian Tribe of Wisconsin.

I have included each of you on this email, so that you are able to contact one another in advance of the meeting, if you wish to do so.

The full details for the panel are shown below.

**Date:** Wednesday, September 12, 2018

**Presentation Time:** 11:30 a.m. to 12:30 p.m.

**Location:** Room 411 South, State Capitol Building

The total time allotted for the panel, including time for questions, is one hour. If the panel intends to utilize a PowerPoint presentation, you may forward the presentation to me in advance, or you may bring the presentation on a flash drive. If you would like to distribute paper copies of the presentation or of anything else to the committee, please bring them with along with you.

Information on parking near the Capitol is available from the Assembly Sergeant's Office at [this website](#).

Feel free to contact me with any questions or concerns using the contact information below, or you may contact my colleague, David Moore, at 608-504-5721 or [david.moore@legis.wi.gov](mailto:david.moore@legis.wi.gov).

Regards,

*Rachel E. Snyder*  
Staff Attorney  
Wisconsin Legislative Council  
(608) 504-5728



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0388/P2  
EAW:emw

In: 11/2  
due: 11/6

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT to amend 940.203 (3) (intro.), 940.203 (3) (a) and 940.203 (3) (b); and to  
2 create 940.203 (1) (ab) of the statutes; relating to: battery or threat to an  
3 officer of the court in a tribal proceeding and providing a penalty.

*Analysis by the Legislative Reference Bureau*

This bill makes it a Class H felony to intentionally cause or threaten to cause  
bodily harm to an attorney, an individual representing the interests of a child, or an  
individual representing the interests of a tribe or a family member of such an  
individual, if the harm or threat is in response to an action taken by that attorney  
or individual in his or her official capacity in a court proceeding under tribal law  
relating to child welfare, juvenile justice, guardianships, protective services, or an  
action affecting the family. Under current law, an identical crime already exists for  
harming or threatening to harm an attorney, guardian ad litem, or corporation  
counsel who is representing someone in a similar proceeding in state court.

any party  
in a tribal court  
proceeding

Because this bill creates a new crime or revises a penalty for an existing crime,  
the Joint Review Committee on Criminal Penalties may be requested to prepare a  
report.

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

4 SECTION 1. 940.203 (1) (ab) of the statutes is created to read:

1 940.203 (1) (ab) "Advocate" means an individual who is representing the  
2 interests of a child or the tribe, <sup>or</sup> in a tribal court proceeding, <sup>or other party</sup>.

3 SECTION 2. 940.203 (3) (intro.) of the statutes is amended to read:

4 940.203 (3) (intro.) Whoever intentionally causes bodily harm or threatens to  
5 cause bodily harm to the person or family member of a current or former guardian  
6 ad litem, corporation counsel, advocate, or attorney under all of the following  
7 circumstances is guilty of a Class H felony:

8 SECTION 3. 940.203 (3) (a) of the statutes is amended to read:

9 940.203 (3) (a) At the time of the act or threat, the actor knows or should have  
10 known that the victim is a current or former guardian ad litem, corporation counsel,  
11 advocate, or attorney, or a member of the current or former guardian ad litem's,  
12 corporation counsel's, advocate's, or attorney's family.

13 SECTION 4. 940.203 (3) (b) of the statutes is amended to read:

14 940.203 (3) (b) The act or threat is in response to an action taken by the current  
15 or former guardian ad litem, corporation counsel, advocate, or attorney in his or her  
16 official capacity in a proceeding under ch. 48, 51, 54, 55, 767, 813, or 938 or in a  
17 similar proceeding in a tribal court.

18 (END)

## Wheeler, Elizabeth

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**From:** Moore, David  
**Sent:** Wednesday, November 07, 2018 3:32 PM  
**To:** Lauer, Ethan; Wheeler, Elizabeth  
**Cc:** Snyder, Rachel  
**Subject:** RE: Pref Note LRB-0388

Thanks, Ethan! Elizabeth, can you put the comma in that Ethan noticed was missing?

David

---

**From:** Lauer, Ethan  
**Sent:** Wednesday, November 07, 2018 3:31 PM  
**To:** Moore, David <David.Moore@legis.wisconsin.gov>; Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>  
**Cc:** Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>  
**Subject:** RE: Pref Note LRB-0388

Sorry, just saw a missing Oxford comma

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**From:** Moore, David  
**Sent:** Wednesday, November 7, 2018 3:28 PM  
**To:** Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>  
**Cc:** Lauer, Ethan <Ethan.Lauer@legis.wisconsin.gov>; Snyder, Rachel <Rachel.Snyder@legis.wisconsin.gov>  
**Subject:** Pref Note LRB-0388

Hi Elizabeth,

Thanks again for putting this pref note in. Text is below.

David

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations. Under current law, it is a Class H felony to intentionally cause or threaten to cause bodily harm to the person or family member of a guardian ad litem, corporation counsel, or attorney if: (a) the person causing or threatening to cause the harm knows or should have known the person is a current or former guardian ad litem, corporation counsel, or attorney, or a member of the current or former guardian ad litem's, corporation counsel's [insert comma] or attorney's family; and (b) the act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a court proceeding relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family. This draft provides that a person who intentionally causes or threatens to cause bodily harm to the person or family member of an advocate, as defined by the draft, is guilty of a Class H felony if: (a) the person causing or threatening to cause the harm knows or should have known the person is an advocate or a member of the advocate's family; and the act or threat is in response to an action taken by the advocate in his or her official capacity in a tribal court proceeding similar to the proceedings described above. Advocate is defined by the bill to mean "an individual who is representing the interests of a child, the tribe, or another party, in a tribal court proceeding."

David Moore

Wisconsin Legislative Council  
(608) 504-5721  
[David.Moore@legis.wisconsin.gov](mailto:David.Moore@legis.wisconsin.gov)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0388/P3  
EAW:emw

Due 11/8 (H)

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

INSUR

1 AN ACT *to amend* 940.203 (3) (intro.), 940.203 (3) (a) and 940.203 (3) (b); and *to*  
2 *create* 940.203 (1) (ab) of the statutes; **relating to:** battery or threat to an  
3 officer of the court in a tribal proceeding and providing a penalty.

JLC-pref

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

This bill makes it a Class H felony to intentionally cause or threaten to cause bodily harm to an individual representing the interests of any party in a tribal court proceeding or a family member of such an individual if the harm or threat is in response to an action taken by that individual in his or her official capacity in a court proceeding under tribal law relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family. Under current law, an identical crime already exists for harming or threatening to harm an attorney, guardian ad litem, or corporation counsel who is representing someone in a similar proceeding in state court.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

INS PREF

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

4 SECTION 1. 940.203 (1) (ab) of the statutes is created to read:





**2019-2020 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0388/P3ins  
EAW:emw

**INS - PREF**

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations. Under current law, it is a Class H felony to intentionally cause or threaten to cause bodily harm to the person or family member of a guardian ad litem, corporation counsel, or attorney if (a) the person causing or threatening to cause the harm knows or should have known the person is a current or former guardian ad litem, corporation counsel, or attorney, or a member of the current or former guardian ad litem's, corporation counsel's, or attorney's family, and (b) the act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a court proceeding relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family.

This bill provides that a person who intentionally causes or threatens to cause bodily harm to the person or family member of an advocate, as defined by the bill, is guilty of a Class H felony if (a) the person causing or threatening to cause the harm knows or should have known the person is an advocate or a member of the advocate's family, and the act or threat is in response to an action taken by the advocate in his or her official capacity in a tribal court proceeding similar to the proceedings described above. Advocate is defined by the bill to mean "an individual who is representing the interests of a child, the tribe, or another party in a tribal court proceeding."



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0388/P4  
EAW:emw

11  
No  
Changes

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to amend** 940.203 (3) (intro.), 940.203 (3) (a) and 940.203 (3) (b); and **to**  
2 **create** 940.203 (1) (ab) of the statutes; **relating to:** battery or threat to an  
3 officer of the court in a tribal proceeding and providing a penalty.

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

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations. Under current law, it is a Class H felony to intentionally cause or threaten to cause bodily harm to the person or a family member of a guardian ad litem, corporation counsel, or attorney if (a) the person causing or threatening to cause the harm knows or should have known the person is a current or former guardian ad litem, corporation counsel, or attorney, or a member of the current or former guardian ad litem's, corporation counsel's, or attorney's family and (b) the act or threat is in response to an action taken by the current or former guardian ad litem, corporation counsel, or attorney in his or her official capacity in a court proceeding relating to child welfare, juvenile justice, guardianships, protective services, or an action affecting the family.

~~12~~ ~~A~~



~~-0438~~

-0388/1

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\*-0935/2\*

connection

Justified  
for  
Assembly

replace copy  
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in system