



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1832/2
EHS:kjf

2017 BILL

1 **AN ACT to renumber** 48.195 (6); **to renumber and amend** 48.195 (3) (a); **to**
2 **amend** 48.13 (2m), 48.195 (2) (a), 48.195 (3) (title), 48.195 (3) (b), 48.195 (4) (a),
3 48.355 (2d) (b) 5. and 48.415 (1m); and **to create** 48.195 (2) (d) 8., 48.195 (2) (e),
4 48.195 (3) (a) 2. to 8., 48.195 (3) (am), 48.195 (4m) and 48.195 (6) (b) of the
5 statutes; **relating to:** the collection and sharing of information regarding an
6 Indian child relinquished under the safe haven law and restoration of physical
7 custody of an Indian child less than 11 days of age to a parent.

Analysis by the Legislative Reference Bureau

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

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. This bill makes various changes to the information that is collected and shared when a child under the age of 72 hours is relinquished under the safe haven law and requires the physical custody of an Indian child so relinquished to be restored to a biological parent upon request when the child is less than 11 days old.

BILL***Information regarding a relinquished child***

Under current law, a parent of a child under the age of 72 hours may anonymously relinquish the child to a law enforcement officer, an emergency medical technician, or a hospital staff member (commonly referred to as the “safe haven law”). The person who takes custody of the child must deliver the child to the intake worker of the court assigned to exercise jurisdiction under the Children’s Code (juvenile court), who must place the child in temporary physical custody pending the commencement of child in need of protection or services proceedings in the juvenile court. The parent and the person who takes the child into custody are immune from civil and criminal liability for any good faith act or omission related to the relinquishment.

Under current law, no one may pursue or attempt to locate or ascertain the identity of a parent who has relinquished a child under the safe haven law. The two exceptions to this prohibition are in cases in which there is reasonable cause to believe that the child has been the victim of abuse or neglect or that the parent was coerced into relinquishing the child. In addition, with certain exceptions, a person who obtains any information relating to the relinquishment of a child is required to keep that information confidential.

Also under current law, a proceeding related to the termination of parental rights to an Indian child or to the out-of-home placement of an Indian child is subject to the federal Indian Child Welfare Act (ICWA) and the Wisconsin Indian Child Welfare Act (WICWA). “Indian child” is defined under ICWA and WICWA as an unmarried person under the age of 18 years who is a member of an Indian tribe or who is both eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. Among other provisions, ICWA and WICWA give the tribal court, rather than the juvenile court, primary jurisdiction in such proceedings and establish standards and procedural requirements for such proceedings.

This bill makes the following changes to the safe haven law:

1. Requires a person who takes custody of a relinquished child to make a reasonable effort to do all of the following:
 - a. Provide the relinquishing parent with a brochure, prepared by the Department of Children and Families, that includes a statement of the parent’s right to remain anonymous, an explanation of the importance of knowing the child’s social and health history, an explanation of the importance to an Indian child of maintaining a social and cultural connection to his or her tribe, and a form on which to provide the name, address, telephone number, and any other identifying information of each parent and any person assisting a parent in the relinquishment, information on the ethnicity and race of the child, information regarding any tribal affiliation for the child, and information regarding the social and health history of the child and of each parent.
 - b. Solicit certain information from the parent regarding the child’s social and health history and any tribal affiliation of the child.
 - c. If the parent declines to provide the information solicited, encourage the parent to submit the information to the county or, in Milwaukee County, to DCF at a later date.
2. Authorizes a person who has information regarding a relinquished child whom the person has reason to believe is an Indian child to release that information to the tribal agent of the Indian child’s tribe.
3. Requires a person who obtains information relating to the tribal affiliation of a relinquished child to promptly transmit the information to the county department in the county where the child was relinquished or, if the child was relinquished in Milwaukee County, to DCF, and requires DCF or a county department that obtains information relating to the tribal affiliation of a relinquished child to promptly transmit the information to the tribal agent of the child’s tribe.

Restoration of physical custody of an Indian child

Current law grants the juvenile court exclusive original jurisdiction over a child who is alleged to be in need of protection or services (CHIPS) and whose parent has relinquished custody of the child under the safe haven law. Current law also provides

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that relinquishment of a child under the safe haven law is a ground for involuntary termination of parental rights (TPR), except that, with respect to an Indian child, extra fact-finding is required related to the effect on the Indian child of continued custody and efforts to prevent the breakup of the Indian child's family.

Under this bill, on the request of the parent of an Indian child less than 11 days old who was relinquished under the safe haven law, the county department or, in Milwaukee County, DCF, must restore physical custody to the parent without conditions or further proceedings. The bill also eliminates relinquishment as a basis of the juvenile court's CHIPS jurisdiction over an Indian child whose parent has had custody restored in this way and eliminates relinquishment as a ground for involuntary TPR to such a child. However, the bill specifies that this requirement to restore physical custody does not prevent the child from being taken into and held in custody in order to prevent imminent physical harm or damage to the child.

1 **SECTION 1.** 48.13 (2m) of the statutes is amended to read:

2 48.13 **(2m)** Whose parent has relinquished custody of the child under s. 48.195

3 (1) and has not had physical custody restored under s. 48.195 (4m) (a);

4 **SECTION 2.** 48.195 (2) (a) of the statutes is amended to read:

5 48.195 **(2)** (a) Except as provided in this paragraph, a parent who relinquishes
6 custody of a child under sub. (1) and any person who assists the parent in that
7 relinquishment have the right to remain anonymous. The exercise of that right shall
8 not affect the manner in which a law enforcement officer, emergency medical
9 technician, or hospital staff member performs his or her duties under this section.
10 No person may ~~induce or coerce~~ or attempt to ~~induce or coerce~~ or, except as provided
11 under sub. (3) (am), induce or attempt to induce a parent or person assisting a parent
12 who wishes to remain anonymous into revealing his or her identity, unless the person
13 has reasonable cause to suspect that the child has been the victim of abuse or neglect
14 or that the person assisting the parent is coercing the parent into relinquishing
15 custody of the child.

16 **SECTION 3.** 48.195 (2) (d) 8. of the statutes is created to read:

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1 48.195 (2) (d) 8. In the case of a child whom the person has reason to believe
2 is an Indian child, the tribal agent, as defined in s. 48.981 (1) (i), of the Indian child's
3 tribe.

4 **SECTION 4.** 48.195 (2) (e) of the statutes is created to read:

5 48.195 (2) (e) Notwithstanding par. (d), a person who obtains information
6 relating to the tribal affiliation of a child relinquished under sub. (1) shall promptly
7 transmit the information to the county department in the county where the child was
8 relinquished or, if the child was relinquished in a county having a population of
9 750,000 or more, to the department. The department or a county department that
10 obtains information relating to the tribal affiliation of a child relinquished under
11 sub. (1) shall promptly transmit the information to the tribal agent, as defined in s.
12 48.981 (1) (i), of the Indian child's tribe.

13 **SECTION 5.** 48.195 (3) (title) of the statutes is amended to read:

14 48.195 (3) (title) INFORMATION FOR PARENT; INFORMATION REGARDING CHILD.

15 **SECTION 6.** 48.195 (3) (a) of the statutes is renumbered 48.195 (3) (a) (intro.)
16 and amended to read:

17 48.195 (3) (a) (intro.) Subject to par. (b), a law enforcement officer, emergency
18 medical technician, or hospital staff member who takes a child into custody under
19 sub. (1) shall make available to the parent who relinquishes custody of the child ~~the~~
20 and any person present with the parent during relinquishment a brochure that
21 includes all of the following:

22 1. The maternal and child health toll-free telephone number maintained by the
23 department under 42 USC 705 (a) (5) (E).

24 **SECTION 7.** 48.195 (3) (a) 2. to 8. of the statutes are created to read:

25 48.195 (3) (a) 2. A statement advising the parent of all of the following:

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- 1 a. That the parent has a right to remain anonymous.
- 2 b. That the provision of any identifying information is voluntary on the part of
3 the parent and the choice to not provide that information will not affect the parent's
4 ability to relinquish the child.
- 5 c. That any identifying information provided by the parent will be treated as
6 confidential.
- 7 3. An explanation that, on the request of a biological parent of an Indian child
8 who has been relinquished under sub. (1), a county department or, in a county having
9 a population of 750,000 or more, the department is required to restore physical
10 custody of the child to the biological parent without conditions or further proceedings
11 if the biological parent provides evidence to the satisfaction of the county department
12 or department that all of the following apply:
- 13 a. The person is the child's biological parent.
- 14 b. The child is an Indian child.
- 15 c. The child has not attained the age of 11 days.
- 16 4. An explanation of the importance to the future well-being of a child of
17 knowing information regarding the child's social and health history.
- 18 5. An explanation of the importance to an Indian child of maintaining a social
19 and cultural connection to the Indian child's tribe and clan and the potential benefits
20 of tribal enrollment.
- 21 6. A form on which to provide all of the following information:
- 22 a. The name, address, telephone number, and any other identifying
23 information of each parent and any person assisting a parent in the relinquishment.
- 24 b. Information on the ethnicity and race of the child.

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1 c. Information regarding any tribal affiliation of the child, including the
2 identity, tribal affiliation, and birth dates of the child's parents and grandparents.

3 d. Information regarding the social and health history of the child and of each
4 parent.

5 7. A postage-paid envelope addressed to the county department of the county
6 in which the relinquishment occurs or, if the relinquishment occurs in a county
7 having a population of 750,000 or more, the department and instructions to use the
8 envelope to return the completed forms.

9 **SECTION 8.** 48.195 (3) (am) of the statutes is created to read:

10 48.195 (3) (am) Subject to par. (b), a law enforcement officer, emergency
11 medical technician, or hospital staff member who takes a child into custody under
12 sub. (1) shall, at the time of taking custody of the child, make a reasonable effort to
13 do all of the following:

14 1. Review the information provided under par. (a) with the parent who
15 relinquishes custody of the child, including the explanation required under par. (a)

16 4.

17 2. Read aloud or play a recording of the explanation under par. (a) 5. to the
18 parent who relinquishes custody of the child.

19 3. Assist the parent in completing the form described in par. (a) 6. and in
20 returning the completed form to the county department of the county in which the
21 relinquishment occurs or, if the relinquishment occurs in a county having a
22 population of 750,000 or more, the department.

23 4. If the parent declines to review the materials under subd. 1. or to complete
24 the form under subd. 3., encourage the parent to take the materials, to review them
25 at a later time, and to return the completed form in the return envelope.

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1 **SECTION 9.** 48.195 (3) (b) of the statutes is amended to read:

2 48.195 (3) (b) The ~~decision~~ decisions whether to accept the information made
3 available under par. (a) is, to engage in the review of that information under par. (am)
4 1., and to provide that information under par. (am) 3. or 4. are entirely voluntary on
5 the part of the parent. No person may ~~induce or~~ coerce or attempt to ~~induce or~~ coerce
6 or, except as provided in par. (am), induce or attempt to induce any parent into
7 accepting that the information made available under par. (a), engaging in the review
8 under par. (am) 1., or providing the information under par. (am) 3. or 4.

9 **SECTION 10.** 48.195 (4) (a) of the statutes is amended to read:

10 48.195 (4) (a) Any parent who relinquishes custody of his or her child under
11 sub. (1) and any person who assists the parent in that relinquishment are immune
12 from any civil or criminal liability for any good faith act or omission in connection
13 with that relinquishment. The immunity granted under this paragraph includes
14 immunity for exercising the right to remain anonymous under sub. (2) (a), the right
15 to leave at any time under sub. (2) (b), ~~and the right not to accept any information~~
16 under sub. (3) (b), the right not to engage in the review under sub. (3) (am) 1., and
17 the right not to complete the form under sub. (3) (am) 3. and immunity from
18 prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for
19 neglecting a child.

20 **SECTION 11.** 48.195 (4m) of the statutes is created to read:

21 48.195 (4m) RESTORATION OF INDIAN CHILD TO PARENTAL CUSTODY. (a) Except as
22 provided in par. (b), on the request of a biological parent of an Indian child who has
23 been relinquished under sub. (1), a county department or, in a county having a
24 population of 750,000 or more, the department shall restore physical custody of the
25 child to the biological parent without conditions or further proceedings if the

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1 biological parent provides evidence to the satisfaction of the county department or
2 department that all of the following apply:

- 3 1. The person is the child's biological parent.
- 4 2. The child is an Indian child.
- 5 3. The child has not attained the age of 11 days.

6 (b) The requirement to restore physical custody of an Indian child to a parent
7 in par. (a) does not prevent the child from being taken into and held in custody under
8 ss. 48.19 to 48.21 in order to prevent imminent physical harm or damage to the
9 Indian child.

10 **SECTION 12.** 48.195 (6) of the statutes is renumbered 48.195 (6) (a).

11 **SECTION 13.** 48.195 (6) (b) of the statutes is created to read:

12 48.195 (6) (b) The department shall develop written materials for inclusion in
13 the brochure under sub. (3) (a). The department shall consult with the Indian tribes
14 in this state in developing the materials described in sub. (3) (a) 5. and the portion
15 of the form under sub. (3) (a) 6. described in sub. (3) (a) 6. c. To the extent practicable,
16 the department shall include in the portion of the form under sub. (3) (a) 6. described
17 in sub. (3) (a) 6. c. the option for identification of an individual by a tribally issued
18 identification number or other method that does not reveal the individual's name.

19 **SECTION 14.** 48.355 (2d) (b) 5. of the statutes is amended to read:

20 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
21 relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old
22 or younger and not to have had physical custody restored under s. 48.195 (4m) (a),
23 as evidenced by a final order of a court of competent jurisdiction making that finding.

24 **SECTION 15.** 48.415 (1m) of the statutes is amended to read:

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1 48.415 **(1m)** RELINQUISHMENT. Relinquishment, which shall be established by
2 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
3 parent has relinquished custody of the child under s. 48.195 (1) when the child was
4 72 hours old or younger and has not had physical custody restored under s. 48.195
5 (4m) (a).

6

(END)