

# Report to the Joint Legislative Council

## Special Committee on State-Tribal Relations



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# SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

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February 2, 2017

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# PART I

## KEY PROVISIONS OF COMMITTEE RECOMMENDATIONS

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The Special Committee on State-Tribal Relations recommends the following bill drafts to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature.

### **LRB-0410/1, RELATING TO BATTERY OF A TRIBAL JUDGE, TRIBAL PROSECUTOR, OR TRIBAL LAW ENFORCEMENT OFFICER AND PROVIDING CRIMINAL PENALTIES**

Under current law, it is a Class H felony to intentionally cause or threaten to cause bodily harm to a current or former judge, prosecutor, or law enforcement officer, or to his or her family member. This bill draft adds tribal judges, tribal prosecutors, and tribal law enforcement officers to the definitions of judge, prosecutor, and law enforcement officer for the purpose of that statute.

### **LRB-1832/2, RELATING TO THE COLLECTION AND SHARING OF INFORMATION REGARDING AN INDIAN CHILD RELINQUISHED UNDER THE SAFE HAVEN LAW AND RESTORATION OF PHYSICAL CUSTODY OF AN INDIAN CHILD LESS THAN 11 DAYS OF AGE TO A PARENT**

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. This law is commonly known as the safe haven law. This bill draft makes various changes to the information that is collected and shared when a child is relinquished under the safe haven law. The changes would require a person taking custody of the relinquished child to provide certain information about the importance of maintaining tribal affiliation for an Indian child, and to solicit information from the parent regarding the child's social and health history and any tribal affiliation of the child. If a person obtains information relating to the tribal affiliation of a relinquished child, the bill draft requires the person to promptly inform county authorities, who must then promptly transmit the information to the tribal agent of the child's tribe. The bill draft also requires that physical custody of an Indian child relinquished under the safe haven law be restored to a biological parent upon the parent's request if the parent provides satisfactory evidence the child is less than 11 days old, the person is the child's biological parent, and the child is an Indian child.

### **LRB-1920/1, RELATING TO GRANTS FOR TREATMENT AND DIVERSION PROGRAMS**

The Wisconsin Treatment Alternatives and Diversion program (TAD) provides grants to counties and tribes to develop treatment and diversion alternatives to incarceration for nonviolent offenders with substance abuse issues. This bill draft specifies that TAD grants given to counties by the Department of Justice for TAD programs may also be given to tribes for the same purpose, and with the same requirements.



# PART II

## COMMITTEE ACTIVITY

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### ASSIGNMENT

The Joint Legislative Council established the Special Committee on State-Tribal Relations and appointed the chairperson by an April 18, 2016 mail ballot. The committee was directed to study issues relating to American Indians and the American Indian tribes and bands in this state and to develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

Membership of the Study Committee was appointed by a June 10, 2016 mail ballot. The final committee membership consisted of three Representatives, three Senators, and 10 public members. A list of committee members is included as **Appendix 3** to this report.

### SUMMARY OF MEETINGS

The committee held two meetings on the following dates:

August 1, 2016

November 29, 2016

The August 1, 2016 meeting began with a presentation by **John DeBacher, Director of Public Library Development, Department of Public Instruction (DPI)**, who gave a brief update on the implementation of 2015 Act 306, relating to tribal college libraries and county joint libraries. Mr. DeBacher explained that that legislation addressed issues specific to Menominee County and the Menominee Indian Tribe of Wisconsin, and expressed the department's interest in continuing to work with the committee to modify the statutes to enable other tribal libraries to participate in the state's public library system without having to meet the same requirements as apply to municipal libraries.

Next, committee staff provided background information on state grants for TAD programs and summarized LRB-5025/P1, a bill draft that explicitly specifies that TAD grants available to counties are also available to tribes. Following discussion, the committee voted to recommend that the Joint Legislative Council introduce the bill draft.

The committee next reviewed LRB-2058/P5, relating to the collection and sharing of information regarding an Indian child relinquished under the safe haven law and restoration of physical custody of an Indian child less than 11 days of age to a parent. Committee staff explained that this bill draft was the product of work the committee began in the prior interim. The committee agreed to one modification of the bill, and unanimously approved the bill draft as modified (LRB-2058/P6).

The committee then discussed the topics committee members would like the committee to study this interim. Suggestions included the following:

- Vice Chair Vinehout proposed developing a resolution honoring native “code talkers” and their contributions to the country, and setting aside a day for the state to commemorate their service.
- Mr. Besaw requested that the committee revisit the tribal ID bill the committee had developed during the previous interim.
- Mr. Besaw also suggested revisiting the implementation of statutes related to American Indian studies curriculum requirements.
- Mr. Besaw proposed the committee look at ways to ensure all tribal law enforcement service would be recognized by the Law Enforcement Standards Board for purposes of eligibility for waiver of training requirements for recertification.
- Mr. Barber proposed an examination of the role of tribal health officials in ch. 51 involuntary commitment proceedings involving tribal members.
- Mr. Barber proposed that crime of causing or threatening to cause harm to a judge, prosecutor, or law enforcement officer be modified to include tribal judges, prosecutors, and law enforcement officers.

At the November 29, 2016 meeting, the committee heard two presentations related to American Indian Studies curriculum in Wisconsin schools. First, **David O’Connor, American Indian Studies Consultant, DPI**, summarized five statutory provisions that require instruction on the history, culture, and tribal sovereignty of American Indian tribes and bands. He also discussed ways in which DPI has worked with school districts to implement those requirements. Next, **Brian Jackson, President, Wisconsin Indian Education Association**, provided the committee with some historical information about initiatives to incorporate education on American Indians and American Indian tribes into school curricula, and about how he has partnered with DPI to develop and encourage model programs on this topic.

The committee then reviewed LRB-0410/P1, a bill draft that adds tribal judges, tribal prosecutors, and tribal law enforcement officers to the definitions of judge, prosecutor, and law enforcement officer for the purpose of the statute that criminalizes causing bodily harm or threatening to cause bodily harm to judges, prosecutors, law enforcement officers, or their family members. Following discussion, the committee voted unanimously to recommend the Joint Legislative Council introduce the bill draft.

Finally, committee staff led a discussion on the proposal that had been suggested at the August 1 meeting to work on legislation that would authorize tribal ID cards to be used as proof of identification for certain circumstances in which state law requires that a person provide proof of identity. The committee reached consensus about the state law purposes for which it would like to authorize a tribal ID to be used and requested committee staff draft legislation that would do this.



# PART III

## RECOMMENDATIONS FOR INTRODUCTION BY THE JOINT LEGISLATIVE COUNCIL

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### **LRB-0410/1, RELATING TO BATTERY OF A TRIBAL JUDGE, TRIBAL PROSECUTOR, OR TRIBAL LAW ENFORCEMENT OFFICER AND PROVIDING CRIMINAL PENALTIES**

#### **Background**

Under current law, an individual who intentionally causes bodily harm or threatens to cause bodily harm to a current or former judge, prosecutor, or law enforcement officer, or to his or her family member, is guilty of a Class H felony.

#### **Description**

This bill draft includes tribal judges, tribal prosecutors, and tribal law enforcement officers within the statute that criminalizes causing or threatening to cause bodily harm to a judge, prosecutor, or law enforcement officer, or to his or her family member.

### **LRB-1832/2, RELATING TO THE COLLECTION AND SHARING OF INFORMATION REGARDING AN INDIAN CHILD RELINQUISHED UNDER THE SAFE HAVEN LAW AND RESTORATION OF PHYSICAL CUSTODY OF AN INDIAN CHILD LESS THAN 11 DAYS OF AGE TO A PARENT**

#### **Background**

Current law provides that 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. This law is commonly known as the safe haven law. Under the law, no one may pursue or attempt to locate or ascertain the identity of a parent who has relinquished a child less than 72 hours old. 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. 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 establish standards and

procedural requirements for these proceedings and give primary jurisdiction to the tribal court, rather than the juvenile court.

## Description

This bill draft 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 (DCF), that includes: (1) a statement of the parent's right to remain anonymous; (2) an explanation of the importance of knowing the child's social and health history; (3) an explanation of the importance to an Indian child of maintaining a social and cultural connection to his or her tribe; and (4) 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. Review the information described above with the parent and read aloud or play a recording of the explanation of the importance to an Indian child of maintaining a social and cultural connection to the child's tribe or clan and the potential benefits of tribal enrollment.
  - c. Solicit certain information from the parent regarding the child's social and health history and any tribal affiliation of the child.
  - d. If the parent declines to provide the information solicited, encourage the parent to submit the information at a later date to the county or, in Milwaukee County, to DCF.
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.
4. Provides that, 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 draft also eliminates relinquishment as a basis of the juvenile

court's child in need of protective services (CHIPS) jurisdiction over an Indian child whose parent has had custody restored in this way and eliminates relinquishment as a ground for involuntary termination of parental rights to such a child. The bill draft 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.

## **LRB-1920/1, RELATING TO GRANTS FOR TREATMENT AND DIVERSION PROGRAMS**

### **Background**

TAD programs allow district attorneys or judges to offer offenders the opportunity to enter into voluntary substance abuse treatment, case management, and other risk reduction services as alternatives to jail or prison confinement. These alternatives may be offered to offenders either pre-trial or post-conviction. The Wisconsin TAD grant program is a partnership of the Department of Justice (DOJ) (as the granting agency), the Department of Health Services (DHS), the Department of Corrections (DOC), and the Office of the Director of State Courts. The program provides grants to counties and tribes to develop treatment and diversion alternatives to incarceration for nonviolent offenders with substance abuse issues.

The TAD grant program funds problem-solving courts as well as other treatment and diversion models. The program was originally funded through the 2005-07 Biennial Budget Act. Eligible programs serve as alternatives to incarceration for substance-abusing offenders and others needing intensive community-based treatment. Projects funded with TAD grants include pretrial diversion at the initial prosecutorial decision-making stage; problem-solving court projects; and alternatives to revocation based on local needs and project design factors.

### **Description**

This bill draft specifies that grants given to counties by DOJ for programs that offer alternatives to prosecution and incarceration for persons who use alcohol or other drugs may also be given to tribes for the same purpose, and with the same requirements.



## COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

The following drafts were recommended by the Special Committee on State-Tribal Relations.

### SPECIAL COMMITTEE VOTE

The Special Committee voted at the August 1, 2016 meeting to recommend the following drafts to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature. The vote on the drafts was as follows:

- LRB-2058/P6, relating to the collection and sharing of information regarding an Indian child relinquished under the safe haven law and restoration of physical custody of an Indian child less than 11 days of age to a parent, passed by a vote of Ayes, 13 (Reps. Mursau, Edming, and Meyers; Sens. Vinehout, Carpenter, and Lazich; and Public Members Allen, Barber, Besaw, Decorah, Holsey, McGeshick, and Summers); Noes, 0; and Absent, 3 (Public Members Bainbridge, Cleveland, and Frank). This draft subsequently became LRB-1832/2.
- LRB-5025/P1, relating to grants for treatment and diversion programs, passed by a vote of Ayes, 13 (Reps. Mursau, Edming and Meyers; Sens. Vinehout, Carpenter, and Lazich; and Public Members Allen, Barber, Besaw, Decorah, Holsey, McGeshick, and Summers); Noes, 0; and Absent, 3 (Public Members Bainbridge, Cleveland, and Frank). This draft subsequently became LRB-1920/1.

The Special Committee voted at the November 29, 2016 meeting to recommend the following draft to the Joint Legislative Council for introduction in the 2017-18 Session of the Legislature. The vote on the draft was as follows:

- LRB-0410/P1, relating to battery of a tribal judge, tribal prosecutor, or tribal law enforcement officer and providing criminal penalties, passed by a vote of Ayes, 13 (Reps. Mursau, Edming and Meyers; Sens. Vinehout and Carpenter; and Public Members Allen, Barber, Besaw, Cleveland, Decorah, Holsey, McGeshick, and Summers); Noes, 0; and Absent, 3 (Sen. Lazich; and Public Members Bainbridge and Frank). This draft subsequently became LRB-0410/1.



## JOINT LEGISLATIVE COUNCIL

<u>SENATE MEMBERS</u>	<u>ASSEMBLY MEMBERS</u>
<b>Roger Roth, Co-Chair</b> Senate President Appleton	<b>Robert Brooks, Co-Chair</b> Assistant Majority Leader Saukville
<b>Alberta Darling</b> JFC Co-Chair River Hills	<b>Tyler August</b> Speaker Pro Tempore Lake Geneva
<b>Scott Fitzgerald</b> Majority Leader Juneau	<b>Joan Ballweg</b> Markesan
<b>Howard Marklein</b> President Pro Tempore Spring Green	<b>Peter Barca</b> Minority Leader Kenosha
<b>Mark Miller</b> Monona	<b>Dianne Hesselbein</b> Assistant Minority Leader Middleton
<b>Terry Moulton</b> Chippewa Falls	<b>Gordon Hintz</b> JFC Ranking Minority Oshkosh
<b>Jerry Petrowski</b> Marathon	<b>Cory Mason</b> Racine
<b>Fred A. Risser</b> Madison	<b>John Nygren</b> JFC Co-Chair Marinette
<b>Jennifer Shilling</b> Minority Leader La Crosse	<b>John Spiros</b> Marshfield
<b>Lena Taylor</b> JFC Ranking Minority Milwaukee	<b>Jim Steineke</b> Majority Leader Kaukauna
<b>Van Wanggaard</b> Racine	<b>Robin Vos</b> Speaker Rochester

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

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## COMMITTEE LIST

### Legislative Council Special Committee on State-Tribal Relations

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**STUDY ASSIGNMENT:** The Special Committee is directed to study issues relating to American Indians and the American Indian tribes and bands in this state and develop specific recommendations and legislative proposals relating to these issues. [s. 13.83 (3), Stats.]

**16 MEMBERS:** 3 Representatives; 3 Senators; and 10 Public Members.

**LEGISLATIVE COUNCIL STAFF:** David Moore, Senior Staff Attorney, Jessica Ozalp, Staff Attorney, and Julie Learned, Support Staff.



## COMMITTEE MATERIALS LIST

*[Copies of documents are available at [www.legis.wisconsin.gov/lc/](http://www.legis.wisconsin.gov/lc/)]*

### **August 1, 2016 Meeting**

- Memorandum, "Opposition to LRB-2058/P5 - Safe Haven Law and Indian Child Welfare Act" from Sarah Diedrick-Kasdorf, Deputy Director of Government Affairs, Wisconsin Counties Association (August 1, 2016).
- Handout from John DeBacher, Director of Public Library Development, Department of Public Instruction, "Public Libraries, Issues and Background for the Special Committee on State-Tribal Relations" (August 1, 2016).
- Handout from Senator Kathleen Vinehout, Vice Chair, "United Native America" (August 1, 2016).
- LRB-2058/P5, relating to the collection and sharing of information regarding an Indian child relinquished under the safe haven law and restoration of physical custody of an Indian child less than 11 days of age to a parent.
- LRB-15-2058/P6, relating to the Collection and Sharing of Information Regarding an Indian Child Relinquished Under the Safe Haven Law and Restoration of Physical Custody of an Indian Child Less Than 11 Days of Age to a Parent.
- LRB-5025/1, relating to grants for treatment and diversion programs.
- Memo No. 1, Grants for Treatment Alternatives and Diversion (TAD) (July 25, 2016).
- Minutes of the August 1, 2016 meeting.

### **November 29, 2016 Meeting**

- LRB-0410/P1, relating to battery of a tribal judge, tribal prosecutor, or tribal law enforcement officer and providing criminal penalties.
- Study Proposal from Public Member Rusty Barber, "Emergency Detention of Reservation Residents" (November 2016).
- Study Proposal from Public Member Rusty Barber, "Reasonable and Prudent Parent Standard" (November 2016).
- Study Proposal from Public Member Gary Besaw, "Wisconsin Indian Education Act (Act 31) Study Issue."
- Memo No. 2, "Inclusion of Tribal Identification Cards in Statutes Requiring Proof of Identity," (November 22, 2016).
- Minutes of the November 29, 2016 meeting.