

1987 Assembly Bill 315

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1987 Wisconsin Act 209

AN ACT to amend 48.981 (3) (a), 48.981 (7) (a) (intro.), 48.981 (7) (a) 2, 48.981 (7) (a) 7 and 48.981 (8) (a); and to create 48.981 (1) (cs) and (i), 48.981 (3) (bm), 48.981 (7) (a) 10m and 11m and (am) and 48.981 (10) of the statutes, relating to child abuse and neglect reports pertaining to Indian children.

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

SECTION 1. 48.981 (1) (cs) and (i) of the statutes are created to read:

48.981 (1) (cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

NOTE: The definition of "Indian child" is taken from the definition of "Indian child" in the Indian child welfare act, 25 USC 1903 (4).

SECTION 2. 48.981 (3) (a) of the statutes is amended to read:

48.981 (3) (a) *Referral of report.* A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or the sheriff or city police department ~~and, in the case of American Indian children, the tribal government~~ of

the facts and circumstances contributing to a suspicion of child abuse or neglect or to a belief that abuse or neglect will occur. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays or legal holidays, refer to the county department ~~and, in the case of American Indian children, the tribal government~~ all cases reported to it. The county department may require that a subsequent report be made in writing. Each county department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

NOTE: Deletes the requirement in current law that persons required to report suspected child abuse must contact the tribal government in the case of Indian children and eliminates the current requirement that sheriffs or police departments receiving reports involving Indian children must report to the tribal government. These provisions of current law are replaced by a provision (in SECTION 3 of the bill) requiring the county department which receives a report involving an Indian child to notify a tribal agent of the existence of such a report.

SECTION 3. 48.981 (3) (bm) of the statutes is created to read:

48.981 (3) (bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Winnebago tribe, if a county department which receives a report under par. (a) pertaining to a

child knows that he or she is an Indian child who resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child and the fact that a report has been received about that child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated or the child is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Winnebago service area where the child resides.

3. If neither subd. 1 nor 2 applies, any tribal agent serving a reservation or Winnebago service area in the county.

SECTION 4. 48.981 (7) (a) (intro.) of the statutes is amended to read:

48.981 (7) (a) (intro.) All reports ~~and records~~ made under this section and, notices provided under sub. (3) (bm) and records maintained by the department, county departments and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

NOTE: Requires that notice provided to a tribal agent about a child abuse or neglect report be kept confidential.

SECTION 5. 48.981 (7) (a) 2 of the statutes is amended to read:

48.981 (7) (a) 2. Appropriate staff of the department ~~or, a county department or a tribal social services department.~~

NOTE: Authorizes disclosure of otherwise confidential records and reports to appropriate staff of a tribal social services department. [Under s. 19.35 (1), a person who has access to a record also has the right to receive a copy of the record.]

SECTION 6. 48.981 (7) (a) 7 of the statutes is amended to read:

48.981 (7) (a) 7. Another county department or a tribal social services department that is currently investigating a report of suspected or threatened child abuse or neglect involving a subject of the record or report.

NOTE: Permits disclosure of otherwise confidential records and reports to a tribal social services department that is currently investigating a report of child abuse or neglect.

SECTION 7. 48.981 (7) (a) 10m and 11m and (am) of the statutes are created to read:

48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record is an issue.

11m. An attorney representing the interests of an Indian tribe or band or of an Indian child in proceedings under subd. 10m.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

NOTE: Permits disclosure of otherwise confidential records and reports to a tribal court or other tribal adjudicative body exercising jurisdiction over a child for use in proceedings in which abuse or neglect of the child who is the subject of such report or record is an issue and to an attorney representing the interests of an Indian tribe or band or an Indian child in such proceedings. Also permits a tribal agent to disclose to a tribal social services department the notice he or she receives from a county department.

SECTION 8. 48.981 (8) (a) of the statutes is amended to read:

48.981 (8) (a) The department and county departments to the extent feasible shall conduct continuing education and training programs for staff of the department and, county department staff departments and tribal social services departments, persons and officials required to report, the general public and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation and coordination in the identification, prevention and treatment of child abuse and neglect. The department and county departments shall develop public information programs about child abuse and neglect.

NOTE: Makes continuing education and training programs offered by the department of health and social services and county departments available to tribal social services departments which are notified of child abuse reports.

SECTION 9. 48.981 (10) of the statutes is created to read:

48.981 (10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each county department described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.