

1999 DRAFTING REQUEST

Bill

Received: 01/15/2000

Received By: malaigm

Wanted: As time permits

Identical to LRB:

For: Roger Breske (608) 266-2509

By/Representing: Vaughn Vance

This file may be shown to any legislator: NO

Drafter: malaigm

May Contact:

Alt. Drafters:

Subject: Children - delinquency
Children - juvenile ct procedure

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Tribal court venue in delinquency cases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			hhagen 01/19/2000	_____	lrb_docadmin 01/19/2000	lrb_docadmin 02/15/2000	

FE Sent For:

<END>

11/11
2/16/00

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1/?	malaigm	1-1-18-2000 Kmg	wh'19	wh'19			

FE Sent For:

<END>

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:
State Capitol
P.O. Box 7882
Madison, WI 53707-7882
(608) 266-2509

Home Address:
8800 Hwy. 29
Eland, WI 54427
(715) 454-6575

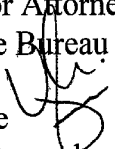


Legislative Hotline:
1 (800) 362-9472

Gordon - this
is for you, I
think. Bob N

MEMORANDUM

January 11, 2000

TO: Robert Nelson, Senior Attorney
Legislative Reference Bureau
FR: Vaughn L. Vance for 
Senator Roger Breske
RE: Tribal Court Venue Amendment

Roger is requesting that you draft legislation to amend Wis. §938.185 Stats. related to tribal court venues. This proposal would retain tribal court jurisdiction for juveniles while placed in state facilities. It is Roger's intent that the counties in which the juvenile facilities are located would retain the first option to prosecute for offenses committed during the term of their incarceration. Suggested language follows:

938.185 Venue

(ab) Notwithstanding paragraph (a) above, in the case where, at the time of the offense, the juvenile is under the supervision of the State Department of Corrections pursuant to an order from the Tribal Court of a federally recognized Indian Reservation, an agreement between the Department of Corrections and said Tribe, venue shall not be in the County of residence if a delinquency petition has been filed in the Tribal Court regarding this offense.

I have also attached some relevant background information prepared by the Menominee Indian Tribe of Wisconsin. As always, please feel free to give me a call at 266-2509 should you have any questions or concerns.



MENOMINEE INDIAN TRIBE OF WISCONSIN

P.O. Box 910
Keshena, WI 54135-0910

Shawano / Menominee county juv. ct. / tribal ct

want case in tribal ct., not circuit ct,

January 10, 2000

Joseph Strohl
Government Relations
44 E. Mifflin St.
Suite 905
Madison, WI 53703

RE: JURISDICTION REGARDING MENOMINEE JUVENILES

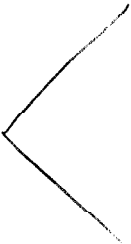
Dear Joe:

Under State law a delinquency matter can be tried either in the county where the delinquent offense took place, or in the county where the juvenile resides. When a Menominee juvenile is placed outside the Reservation by Tribal Court order, that juvenile is subject to the laws of the State of Wisconsin.

As an example, a Menominee juvenile placed in Lincoln Hills pursuant to Tribal Court order who commits a battery may be prosecuted, under State law, in either Lincoln County or Menominee County. The Tribe could also prosecute the juvenile under Tribal law. The Tribe would like to see this changed so that the juvenile could not be prosecuted in Menominee County unless the Tribe chose not to act. The Tribe believes that prosecution in Menominee County serves no good purpose.

One way to accomplish the goal stated above would be an amendment to the State statutes as follows:

938.185 Venue



(ab) Notwithstanding paragraph (a) above, in the case where, at the time of the offense, the juvenile is under the supervision of the State Department of Corrections pursuant to an order from the Tribal Court of a federally recognized Indian Reservation, and an agreement between the Department of Corrections and said Tribe, venue shall not be in the County of residence if a delinquency petition has been filed in the Tribal Court regarding this offense.

The Tribe is not looking for exclusive jurisdiction regarding this type of offense. Jurisdiction would be concurrent with the State. The above amendment would still

allow prosecution in the county where the incident occurred, but prosecution would not take place in the county of residence, unless the Tribe failed to prosecute.

I do not believe it is proper to amend 938.185, Wis. Stats. to add Tribal Court as a venue choice. The Tribe and the State are separate sovereigns. The State can only grant venue to its various subdivisions, not to a separate sovereign.

Although at this time I believe that the Menominee Tribe is the only Wisconsin Tribe which has an agreement with the Department of Corrections, it is possible that in the future other Tribes may seek such an agreement. Even though the other Wisconsin Tribes are subject to Public Law 280, they still have the power to prosecute Indians on their reservation for criminal or delinquent acts. Therefore, the proposed amendment is not necessarily specific to the Menominee Tribe.

28 USC 1361
18 USC 1162
70 OAG 219
25 USC

This proposed amendment could be changed as follows in order to broaden it beyond the scope of juveniles under the supervision of the Department of Corrections:

938.185 Venue

(ab) Notwithstanding paragraph (a) above, in the case where the juvenile is an Indian residing within the borders of a federally recognized Indian Reservation, or on land owned by the United States in trust for a federally recognized Indian Tribe, venue shall not be in the County of residence if a delinquency petition has been filed in the Tribal Court regarding this offense.

Do not draft

This amendment would effect a Menominee juvenile who lived on the reservation if said juvenile was arrested for a crime off the reservation regardless as to the reason why the juvenile was off the reservation.

I am meeting with Mary Husby tomorrow regarding this issue and will contact you with her comments. If you have any questions, please give me a call at (715) 799-5194.

Sincerely,



John R. Wilhelmi
Asst. Program Attorney

c. Mary Husby, Tribal Social Services
File

UNOFFICIAL TEXT

Chapter 938**938.185**

938.185

938.185 Venue.

938.185(1)

(1) Subject to sub. (3), venue for any proceeding under ss. 938.12, 938.125, 938.13, 938.135 and 938.18 may be in any of the following:

938.185(1)(a)

(a) The county where the juvenile resides.

938.185(1)(b)

(b) The county where the juvenile is present.

938.185(1)(c)

(c) In the case of a violation of a state law or a county, town or municipal ordinance, the county where the violation occurred, except that in that case the court of the county where the violation occurred may, after the juvenile is adjudged delinquent, transfer the proceeding to the county where the juvenile resides for disposition, if the court of the county of residence agrees to that transfer.

938.185(2)

(2) Venue for any proceeding under s. 938.363 or 938.365 shall be in the county where the dispositional order was issued, unless the juvenile's county of residence has changed, or the parent of the juvenile has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the juvenile or parent.

938.185(3)

(3) Venue for a proceeding under s. 938.12 or 938.13 (12) based on an alleged violation of s. 301.45 (6) may be in the juvenile's county of residence at the time that the petition is filed or, if the juvenile does not have a county of residence in this state at the time that the petition is filed, any county in which the juvenile has resided while subject to s. 301.45.

938.185 - ANNOT.

History: 1995 a. 77, 352, 440.

938.185 - ANNOT.

Venue becomes an issue only in the event that it is contested. It is not an element of the crime charged. The county where a juvenile "resides" is the county of domicile. The county where a juvenile "is present" is the county where the child is present at the time a petition is filed. State v. Corey J. G. 215 Wis. 2d 394, 572 N.W.2d 845 (1998).

SUBCHAPTER IV**HOLDING A JUVENILE IN CUSTODY**

ROGER BRESKE

STATE SENATOR

12th District

Capitol Address:
State Capitol
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Madison, WI 53707-7882
(608) 266-2509

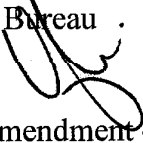
Home Address:
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Eland, WI 54427
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1 (800) 362-9472



MEMORANDUM

January 12, 2000

TO: Robert Nelson, Senior Attorney
Legislative Reference Bureau .
FR: Vaughn L. Vance for 
Senator Roger Breske
RE: Tribal Court Venue Amendment - Modification

Please find attached revised language for the tribal venue amendment that I have previously contacted you about. I would appreciate it if you would substitute the attached language for that which I had previously forwarded to you.

As always, please feel free to give me a call with any questions or concerns that you may have regarding this request.

938.185 Venue

(ab) Notwithstanding paragraph (a) above, in the case where, at the time of the offense, the juvenile is under the supervision of the State Department of Corrections pursuant to an order from the Tribal Court of a federally recognized Indian Reservation, and an agreement between the Department of Corrections and said Tribe, venue shall not be in the County of residence if a delinquency petition has been filed in the Tribal Court regarding this offense. Under these circumstances the Circuit Court in the County where the offense took place may transfer to the appropriate Tribal Court any proceeding involving said offense.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4233/1
GMM...:....
King

1 **AN ACT** *Gen. Cat.*; **relating to:** venue for a delinquency proceeding involving an
 2 American Indian juvenile who is alleged to have committed a delinquent act
 3 while under the supervision of the department of corrections under an order of
 4 a tribal court and an agreement between the department of corrections and the
 5 governing body of an American Indian tribe or band.

that's

Analysis by the Legislative Reference Bureau

Under current law, venue for a delinquency proceeding, that is, the county where the proceeding is held, may be in the county where the juvenile resides, the county where the juvenile is present or the county where the violation occurred. This bill prohibits venue for a delinquency proceeding based on an allegation that an American Indian juvenile has committed a delinquent act from being in the county where the juvenile resides if at the time of the delinquent act the juvenile is under the supervision of the department of corrections (DOC) under an order of the tribal court of a federally recognized American Indian tribe or band in this state and an agreement between DOC and the governing body of the tribe or band and a delinquency petition relating to the delinquent act has been filed in the tribal court that has jurisdiction over the juvenile. In that situation, the court of the county where the violation occurred or where the juvenile is present may transfer any delinquency proceeding in that court to the tribal court that has jurisdiction over the juvenile.

id

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 938.185 (1) (intro.) of the statutes is amended to read:

2 938.185 (1) (intro.) Subject to ~~sub.~~ subs. (2), (3) and (4), venue for any
3 proceeding under ss. 938.12, 938.125, 938.13, 938.135 and 938.18 may be in any of
4 the following:

5 History: 1995 a. 77, 352, 440.

5 **SECTION 2.** 938.185 (4) of the statutes is created to read:

6 938.185 (4) (a) Venue for a proceeding under s. 938.12 based on an allegation
7 that an American Indian juvenile has committed a delinquent act may not be in the
8 county where the juvenile resides if all of the following apply:

9 1. At the time of the delinquent act the juvenile is under the supervision of the
10 department under an order of the tribal court of a federally recognized American
11 Indian tribe or band in this state and an agreement between the department and the
12 governing body of the tribe or band.

13 2. A delinquency petition relating to the delinquent act has been filed in the
14 tribal court that has jurisdiction over the juvenile.

15 (b) If an American Indian juvenile commits a delinquent act and par. (a) 1. and
16 2. applies, the court of the county where the violation occurred or where the juvenile
17 is present may transfer any proceeding under s. 938.12 in that court to the tribal
18 court that has jurisdiction over the juvenile.

19 **SECTION 3. Nonstatutory provisions.**

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/19/2000

To: Senator Breske

Relating to LRB drafting number: LRB-4233

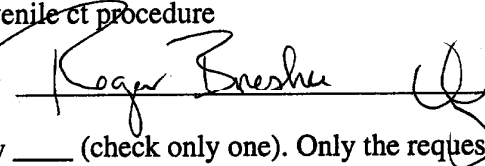
Topic

Tribal court venue in delinquency cases

Subject(s)

Children - delinquency, Children - juvenile ct procedure

1. **JACKET** the draft for introduction

 _____

in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Gordon M. Malaise, Senior Legislative Attorney
Telephone: (608) 266-9738