

2003 DRAFTING REQUEST

Bill

Received: **04/17/2003**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC 6-3137**

By/Representing: **Joyce Kiel**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - juvenile justice**

Extra Copies:

Submit via email: **YES**

Requester's email: **joyce.kiel@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Jurisdiction over American Indian juvenile who commits delinquent act off reservation

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>
/?							
/P1	gmalaise 04/19/2003	csicilia 04/28/2003					S&L
/1			rschluet 04/29/2003		mbarman 04/29/2003		S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	gmalaise 05/09/2003	csicilia 05/09/2003	rschluet 05/09/2003	_____	lemery 05/09/2003	lemery 06/03/2003	

FE Sent For:

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/P1	gmalaise 04/19/2003	csicilia 04/28/2003		_____			
/1			rschluet 04/29/2003	_____	mbarman 04/29/2003		

*For Assembly S&L
Per Joyce Kiel S&L*

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/1			rschluet 04/29/2003		mbarman 04/29/2003		

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5-9-03 CPH

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1/?	gmalaise	1 cjs 4/28/03	pc conviction ch 4/17	_____	_____	_____	_____

FE Sent For:

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 4-25-3
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 pb

Malaise, Gordon

From: Kiel, Joyce
Sent: Thursday, April 17, 2003 9:12 AM
To: Malaise, Gordon
Cc: Lovell, David
Subject: Two Drafting Requests for Joint Legislative Council's Special Committee on State-Tribal Relations



0148/1



0039/2

Gordon:

Would you please convert the enclosed two WLC drafts to LRB drafts. The Special Committee on State-Tribal Relations will be voting on them in the WLC version. We are assuming they will be recommended by the committee, and we would like to have the LRB drafts prepared for consideration by the Joint Legislative Council. The date for a Council meeting has not yet been scheduled, but it may be in late May. That means we would like to have the LRB drafts finalized by mid-May so that we can prepare a report for the Council.

Please send the LRB drafts to me. Also, please let me know if you have any questions.

As always, thanks for your help.

Joyce L. Kiel, Senior Staff Attorney
Wisconsin Legislative Council Staff
Suite 401, One East Main Street
Madison, WI 53703
608-266-3137
608-266-3830 (fax)
Joyce.Kiel@legis.state.wi.us

1 AN ACT *to amend* 938.185 (1) (intro.); and *to create* 938.02 (12g), 938.02 (12m),
 2 938.02 (15d), 938.02 (18g), 938.185 (4), 938.24 (4m), 938.25 (2g), 938.255 (1) (cr),
 3 938.299 (9) and 938.315 (1) (h) of the statutes; **relating to:** proceedings involving
 4 an American Indian juvenile who is alleged to have committed a delinquent act
 5 while ~~off~~ ^{physically outside the boundaries of} a reservation and off-reservation trust land because of certain tribal court
 6 orders.

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

The bill
 JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This ~~draft~~ ^{bill} was prepared for the ~~Joint Legislative Council's Special Committee on State-Tribal Relations~~ ^{bill}. ~~It~~ relates to proceedings involving an American Indian juvenile (age 16 or under for violations of criminal laws) who is alleged to have committed a delinquent act while off the reservation of a federally recognized American Indian tribe or band in this state (tribe) ^{JR} and any off-reservation trust land of either a tribe or tribal member because of an order issued by a court of that tribe, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship. ^a

The Menominee Indian Tribe of Wisconsin originally proposed that the 2000-02 ~~Special Committee on State-Tribal Relations~~ address the issue following the Wisconsin Court of Appeals decision in *In the Interest of Elmer J.K. III*, 224 Wis. 2d 372, 591 N.W.2d 176 (Wis. Ct. App. 1999). That case involved a Menominee juvenile who had been adjudicated delinquent by the Menominee Tribal Court and placed by the tribal court in a residential facility outside the boundaries of the Menominee Reservation and who then engaged in disorderly conduct and battery on staff members at the residential facility in violation of several Wisconsin criminal statutes. The *Elmer J.K.* court held that the state court had jurisdiction and stated that the Menominee Tribal Court did not have jurisdiction. ^{bill}

The jurisdiction of a tribal court is determined by federal law and tribal law, rather than state law. This ~~draft~~ ^{bill} does not alter, diminish, or expand the jurisdiction of either the state courts or tribal courts. Rather, it ^{The bill}

provides a process for consultation to determine which government should exercise its existing jurisdiction based on the best interests of the juvenile and of the public.

The ^{bill} draft includes the following provisions relating to an American Indian juvenile who allegedly commits a delinquent act and, at the time of the alleged delinquent act was both: (a) under an order of a tribal court, other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship; and (b) off that tribe's reservation and any ~~off-reservation~~ trust land of either ~~that~~ tribe or a member of ~~that~~ tribe because of the tribal court order.

(specified circumstances)

1. Duties of County Juvenile Intake Worker ^{the specified}

of what?

If the county juvenile ^{court} intake worker (intake worker) determines in the intake inquiry that these circumstances exist, the intake worker must promptly ^{act} (notify) the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney. If the intake worker is notified by a tribal official that a petition related to the delinquency has been or may be filed in tribal court, the intake worker must consult with tribal officials.

the juvenile has allegedly committed a delinquent act under the specified circumstances

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, do one of the following: (a) enter into a deferred prosecution agreement; (b) request that the district attorney file a delinquency petition or, if the juvenile is under 10 years of age, request that the district attorney or corporation counsel file a juvenile in need of protection or services (JIPS) delinquency petition; or (c) close the case. (The county board determines whether the district attorney or corporation counsel handles JIPS cases in the county.) The ^{bill} draft specifies that the intake worker may close a case without consultation with tribal officials.

2. Duties of District Attorney or Corporation Counsel

If the intake worker, district attorney, or corporation counsel has been notified that a petition relating to the alleged delinquent act has been or may be filed in tribal court, the district attorney must attempt to consult with appropriate tribal officials before filing a delinquency petition or JIPS delinquency petition in the court assigned to exercise jurisdiction

under chs. 48 and 938, stats. (juvenile court), or, if the county board has designated the corporation counsel to handle JIPS delinquency cases, the corporation counsel must attempt to consult with appropriate tribal officials before filing a JIPS delinquency petition.

3. Delinquency or JIPS Delinquency Petition

If a decision is made to file a delinquency petition or JIPS delinquency petition in juvenile court, the petition must include a statement that ~~these~~ circumstances exist. In addition, the petition also must include a statement that a petition has been or may be filed in tribal court relating to the same delinquent act if a tribal official has informed the intake worker, district attorney, or corporation counsel that that is the case.

the specified

4. Juvenile Court Procedure

If the juvenile court is informed during a delinquency proceeding or JIPS delinquency proceeding that a petition relating to the same delinquency act has been or may be filed in tribal court, the juvenile court must stay (suspend) the proceeding and communicate with the tribal court to discuss whether the tribal court or juvenile court may be the more appropriate forum. If the juvenile court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the juvenile court that the tribal court would be the more appropriate forum, the juvenile court must either dismiss the delinquency petition or JIPS delinquency petition without prejudice or stay the proceeding. The juvenile court's decision must be based on the best interests of the juvenile and of the public.

If the juvenile court stays the proceeding, rather than dismissing the petition, the juvenile court's jurisdiction over the juvenile continues for one year after the last order affecting the stay is entered. During that time, a motion may be made by any of the parties to lift the stay order and have the juvenile court take further action. ~~However, if~~ the stay order remains in place, the petition will automatically be dismissed one year following the last court order.

5. Venue

If a petition relating to the same delinquent act has been filed in tribal court, the ~~draft~~ prohibits venue for a delinquency proceeding or JIPS delinquency proceeding from being in the county where an American Indian juvenile resides (unless it is also either the county where the juvenile is present or the county where the violation occurred). In contrast, under *current law*, venue for a delinquency proceeding or JIPS delinquency proceeding may be in any of the following 3 county circuit

(b) (1)

courts: (a) the county where the juvenile resides; (b) the county where the juvenile is present; or (c) the county where the violation occurred.

This draft does *not* address the issue of possible concurrent tribal court jurisdiction and juvenile court jurisdiction if an American Indian juvenile commits a delinquent act either: (a) *on* a tribe's reservation or off-reservation trust land that is subject to Public Law 280 (that is, Indian country in Wisconsin, other than the Menominee Reservation); or (b) *off* a tribe's reservation and off-reservation trust land if the juvenile was not off the reservation or off-reservation trust land because of a tribal court order. The special committee has not been asked to address either issue.

SECTION 1. 938.02 (12g) of the statutes is created to read:

938.02 (12g) ~~Off~~ a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of a tribal court order" means physically outside the boundaries of a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence of a tribal court order. It includes circumstances in which an American Indian juvenile is outside the boundaries of a reservation and any off-reservation trust land of a tribe or tribal member ~~under a tribal court order temporarily placing the juvenile in the home of one of the juvenile's relatives who may not at the time of, or at any time after, or may not subsequent to,~~ the tribal court order ~~reside~~ on a reservation or off-reservation trust land.

26
definition
basically
reports
defined term

SECTION 2. 938.02 (12m) of the statutes is created to read:

938.02 (12m) "Off-reservation trust land" means land in this state that is held in trust by the ~~United States~~ ^{Federal government} for the benefit of a tribe or an American Indian and that is located outside the boundaries of a tribe's reservation.

SECTION 3. 938.02 (15d) of the statutes is created to read:

938.02 (15d) "Reservation" means land in this state within the boundaries of the reservation of a tribe.

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1 SECTION 4. 938.02 (18g) of the statutes is created to read:

2 938.02 (18g) "Tribe" means a federally recognized American Indian tribe or band in
3 this state.

NOTE: SECTIONS 1 to 4 define "tribe", "reservation", "off-reservation trust land", and "off a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of a tribal court order" in the general definitions section of ch. 938, stats. (the Juvenile Justice Code).

4 SECTION 5. 938.185 (1) (intro.) of the statutes is amended to read:

5 938.185 (1) (intro.) Subject to sub. ^(J) ~~subs. (3), and (4)~~, venue for any proceeding under
6 ss. 938.12, 938.125, 938.13, 938.135 and 938.18 may be in any of the following:

7 SECTION 6. 938.185 (4) of the statutes is created to read:

8 938.185 (4) Venue for a proceeding under s. 938.12 or 938.13 (12) based on an
9 allegation that an American Indian juvenile has committed a delinquent act may not be in the
10 county specified in sub. (1) (a), unless that county is specified in sub. (1) (b) or (c), if all of
11 the following ^(resides) circumstances apply:

12 (a) At the time of the alleged delinquent act the juvenile was under an order of a tribe's
13 court, [other than a tribal court order relating to adoption, physical placement or visitation with
14 the juvenile's parent, or permanent guardianship.] physically outside the boundaries of

15 (b) At the time of the alleged delinquent act the juvenile was off that tribe's reservation
16 and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence
17 tribal court order. including ...

18 (c) A petition relating to the delinquent act has been filed in a tribal court that has
19 jurisdiction over the juvenile.

NOTE: Eliminates the court of the county where an American Indian juvenile resides as the venue for a delinquency proceeding or JIPS delinquency proceeding (unless it is either the county where the juvenile

is present or the county where the violation occurred), if the specified circumstances exist. (2r)

SECTION 7.938.24 (4m) of the statutes is created to read:
(2r) (a)

938.24 (4m) If the intake worker determines as a result of the intake inquiry that the

juvenile is an American Indian and that, at the time of an alleged delinquent act, the juvenile

was under an order of a tribe's court, [other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship] and was off that

tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence of the tribal court order, the intake worker shall promptly notify the clerk of the

tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney. If the intake worker is notified by an official of the tribe that a petition relating to

the delinquent act has been or may be filed in tribal court, the intake worker shall consult with tribal officials. After the consultation, the intake worker shall determine whether the best

interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the

public would be served by having the matter proceed solely in tribal court, the intake worker shall close the case. If the intake worker determines that the best interests of the juvenile and

of the public would not be served by having the matter proceed solely in tribal court, the intake worker shall proceed under sub. (3) or (4). This subsection does not prohibit the intake worker

from closing the case under sub. (4) without consultation.

NOTE: Under current law, if a juvenile is alleged to have committed a delinquent act, information is referred to an intake worker who must conduct an intake inquiry and determine whether the available facts establish on their face that the juvenile court has jurisdiction and also determine the best interests of the juvenile and of the public with regard to any action to be taken. An intake worker must do one of the following: (a) request that the district attorney file a delinquency petition, or for juveniles under 10 years of age, request that the district

is p 3. That. "

all of the following circumstances apply:

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is p 2. That

physically outside the boundaries of

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those circumstances (b)

what if tribe never gets back to intake worker?

to

to

to handle JIPS delinquency cases

after

attorney or the corporation counsel, if designated by the county board of supervisors, file a JIPS delinquency petition; (b) enter into a deferred prosecution agreement requiring the juvenile to undertake various actions; or (c) close the case. This generally must occur within 40 days of receipt of the referral information. An intake worker must perform his or her responsibilities under general written policies formulated by the circuit judges for the county, subject to approval of the chief judge of the judicial administrative district.

Under current law, if an intake worker decides to close a delinquency or JIPS delinquency case, the intake worker must provide written notice to the district attorney (or corporation counsel if the juvenile is under 10 years of age and the county board has designated the corporation counsel to handle JIPS delinquency cases) and must attempt to provide written notice to all victims of the juvenile's act that the case is being closed. Even if the intake worker has closed the case, the district attorney may initiate a delinquency proceeding and the district attorney or the corporation counsel may initiate a JIPS delinquency proceeding if the juvenile is under 10 years of age. Except in certain circumstances, the petition must be filed within 20 days after the district attorney or corporation counsel has been notified that the case has been closed by the intake worker. bill

that the juvenile has allegedly committed a delinquent act under those circumstances

This draft provides that if the intake worker determines as a result of the intake inquiry that the juvenile is an American Indian and that, at the time of an alleged delinquent act, the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was off that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney. If the intake worker is notified by a tribal official that a petition related to the delinquency has been or may be filed in tribal court, the intake worker must consult with tribal officials.

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, enter into a deferred prosecution agreement, request that a

delinquency petition or JIPS delinquency petition be filed, or close the case. The draft specifies that the intake worker may close a case without consultation with tribal officials.

authority of the

The ~~draft~~ ^{bill} does not eliminate the ~~intake worker's duty~~ ^{duty of the} to inform the district attorney or corporation counsel that the case has been closed or the ~~district attorney or corporation counsel's authority~~ ^{authority} to initiate a delinquency proceeding or JIPS delinquency proceeding even though the intake worker has closed the case. It also does not eliminate the intake worker's duty to notify the victim of the delinquent act.

1 SECTION 8. 938.25 (2g) of the statutes is created to read: ^{The bill}

2 938.25 (2g) If the ~~intake worker~~ ^{stat} district attorney, or corporation counsel has been
3 notified that a petition relating to the alleged delinquent act has been or may be filed in tribal
4 court under the circumstances described in s. 938.24 ^(2r) ~~(4m)~~, the district attorney or corporation
5 counsel shall attempt to consult with appropriate tribal officials before filing a petition under
6 s. 938.12 or 938.13 (12).

the specified

NOTE: Requires the district attorney or corporation counsel to attempt to consult with appropriate tribal officials before filing a delinquency petition or JIPS delinquency petition under ~~certain~~ circumstances.

7 SECTION 9. 938.255 (1) (cr) of the statutes is created to read:

8 938.255 (1) (cr) 1. If the petition is initiating proceedings under s. 938.12 or 938.13 (12)
9 and all of the following apply, a statement to ^{stat} ~~that~~ effect:

- 10 a. The juvenile is an American Indian.
- 11 b. At the time of the alleged delinquent act, the juvenile was under an order of a tribe's
- 12 court ^{other than a tribal court order relating to adoption, physical placement or visitation with}
- 13 the juvenile's parent, or permanent guardianship, ^{P.C. physically outside the boundaries of} and was off that tribe's reservation and any
- 14 off-reservation trust land of either that tribe or a member of that tribe ^{as a direct consequence} because of the tribal
- 15 court order. ^{including}

1 2. If the statement under subd. 1. is included ^{in the petition} and if the intake worker, district attorney,
 2 or corporation counsel has been notified by an official of the tribe that a petition relating to
 3 the delinquent act has been or may be filed in tribal court with respect to the alleged delinquent
 4 act, a statement to that effect. ^{the specified}

NOTE: Requires that a delinquency petition or JIPS delinquency petition filed with respect to an American Indian juvenile include specific information if ~~certain~~ ^{the specified} circumstances exist.

5 **SECTION 10.** 938.299 (9) of the statutes is created to read:

6 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the statement ^{specified} in
 7 s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under s. 938.12 or 938.13
 8 (12) that a petition relating to the delinquent act has been filed in a tribe's court with respect
 9 to an American Indian who was under an order of the tribal court, ^{specified} other than a tribal court order
 10 relating to adoption, physical placement or visitation with the juvenile's parent } or permanent
 11 guardianship, } and was ~~off~~ that tribe's reservation and any off-reservation trust land of either
 12 that tribe or a member of that tribe ~~because~~ ^{include in} of the tribal court order when the delinquent act
 13 allegedly was committed, the court shall stay the proceeding and communicate with the tribal
 14 court ~~in which the other proceeding is or may be pending~~ to discuss which court may be the
 15 ~~more appropriate forum.~~

16 (b) If the court and tribal court either mutually agree or agree under the terms of an
 17 established judicial protocol applicable to the court that the tribal court would be the ~~more~~
 18 ~~appropriate forum,~~ the court shall dismiss the petition without prejudice or stay the
 19 proceeding. The court's decision shall be based on the best interests of the juvenile and of the
 20 public.

21 (c) If a stay is ordered under par. (b), jurisdiction of the court continues over the juvenile
 22 until one year has elapsed since the last order affecting the stay was entered in the court. At

1 any time during which jurisdiction of the court continues over the juvenile, the court may, on
 2 motion and notice to the parties, subsequently lift the stay order and take any further action
 3 in the proceeding as the interests of the juvenile and of the public require. When jurisdiction
 4 of the court over the juvenile terminates by reason of the lapse of the one year following the
 5 last court order in the action, the clerk of the court shall, without notice, enter an order
 6 dismissing the petition.

the specified circumstances

procedure when

NOTE: Includes provisions relating to a juvenile court if a delinquency or JIPS delinquency case involves an American Indian juvenile and certain conditions exist.

This ^{*bill*} ~~draft~~ does not include details as to how the communication between the courts is to be conducted, for example, on or off the record, after a hearing, or with or without the parties present.

7 **SECTION 11.** 938.315 (1) (h) of the statutes is created to read:

8 938.315 (1) (h) Any period of delay resulting from consultation under s. 938.24 ^{*(2r)*} ~~(4r)~~
 9 or 938.25 (2g). *any period of delay resulting from consultation by ... w/ tribal officials is not counted*

NOTE: Provides that in computing time periods under ch. 938, stats. (the Juvenile Justice Code), ~~the time for the intake worker's, district attorney's, or corporation counsel's consultation with tribal officials is not counted.~~

10 **SECTION 12. Initial applicability.** This act first applies to delinquent acts committed
 11 on the effective date of this section.

bill first applies

NOTE: Provides that the ~~act's provisions~~ ^{*bill*} apply to delinquent acts committed on or ~~after~~ ^{*bill*} the effective date of the act.

12 (END)

bill



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-2553/PA

GMM:/...:ch

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DRAFT

use anal:jlcnote

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

→ FE-52

SA
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newCRV

physically outside the boundaries of

Regenerate

- 1 AN ACT to amend 938.185 (1) (intro.); and to create 938.02 (12g), 938.02 (12m),
- 2 938.02 (15d), 938.02 (18g), 938.185 (4), 938.24 (4m), 938.25 (2g), 938.255 (1) (cr),
- 3 938.299 (9) and 938.315 (1) (h) of the statutes; relating to: proceedings
- 4 involving an American Indian juvenile who is alleged to have committed a
- 5 delinquent act while on a reservation and off-reservation trust land because
- 6 of certain tribal court orders.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

physically outside the boundaries of

bill

The bill

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council's Special Committee on State Tribal Relations. It relates to proceedings involving an American Indian juvenile (age 16 or under for violations of criminal laws) who is alleged to have committed a delinquent act while on the reservation of a federally recognized American Indian tribe or band in this state (tribe) and any off-reservation trust land of either a tribe or tribal member because of an order issued by a court of that tribe, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

The Menominee Indian Tribe of Wisconsin originally proposed that the 2000-02 Special Committee on State Tribal Relations address the issue following the Wisconsin Court of Appeals decision in *In the Interest of Elmer J.K. III*, 224 Wis. 2d 372, 591 N.W.2d 176 (Wis. Ct. App. 1999). That case involved a Menominee juvenile who had been adjudicated delinquent by the Menominee Tribal Court and placed by the tribal court in a residential facility outside the boundaries of the Menominee Reservation and who then engaged in disorderly conduct and battery to staff members at the residential facility in violation of several Wisconsin criminal statutes. The *Elmer J.K.* court held that the state court had jurisdiction and stated that the Menominee Tribal Court did not have jurisdiction.

The jurisdiction of a tribal court is determined by federal law and tribal law, rather than state law. This ~~draft~~ ^{bill} does not alter, diminish, or expand the jurisdiction of either the state courts or tribal courts. Rather, ~~it~~ ^{the bill} provides a process for consultation to determine which government should exercise its existing jurisdiction based on the best interests of the juvenile and of the public.

The ~~draft~~ ^{bill} includes the following provisions relating to an American Indian juvenile who allegedly commits a delinquent act and, at the time of the alleged delinquent act was both: (a) under an order of a tribal court, other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship; and (b) ~~off~~ ^{physically outside the boundaries of} that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order.

1. Duties of County Juvenile Intake Worker

If the ~~county juvenile intake worker~~ ^{intake worker} determines in the intake inquiry that ~~these~~ ^{specified} circumstances exist, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney. If the intake worker is notified by a tribal official that a petition related to the delinquency has been or may be filed in tribal court, the intake worker must consult with tribal officials.

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, do one of the following: (a) enter into a deferred prosecution agreement; (b) request that the district attorney file a delinquency petition or, if the juvenile is under 10 years of age, request that the district attorney or corporation counsel file a juvenile in need of protection or services (JIPS) delinquency petition; or (c) close the case. (The county board determines whether the district attorney or corporation counsel handles JIPS cases in the county.) The ~~draft~~ ^{bill} specifies that the intake worker may close a case without consultation with tribal officials.

2. Duties of District Attorney or Corporation Counsel

If the ~~intake worker~~ ^{juvenile} district attorney or corporation counsel has been notified that a petition relating to the alleged delinquent act has been or may be filed in tribal court, the district attorney must attempt to consult with appropriate tribal officials before filing a delinquency petition or JIPS delinquency petition in the court assigned to exercise jurisdiction under chs. 48 and 938, stats. (juvenile court), or, if the county board has designated the corporation counsel to handle JIPS delinquency cases, the corporation counsel must attempt to consult with appropriate tribal officials before filing a JIPS delinquency petition.

3. Delinquency or JIPS Delinquency Petition

bill
physically outside the boundaries of

the specified
that the juvenile has allegedly committed a delinquent act under the specified circumstances

(intake worker)
(specified circumstances)
of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court)

bill

If a decision is made to file a delinquency petition or JIPS delinquency petition in juvenile court, the petition must include a statement that ~~these~~ circumstances exist. In addition, the petition also must include a statement that a petition has been or may be filed in tribal court relating to the same delinquent act if a tribal official has informed the intake worker, district attorney, or corporation counsel that that is the case.

the specified

4. Juvenile Court Procedure

delinquent

If the juvenile court is informed during a delinquency proceeding or JIPS delinquency proceeding that a petition relating to the same delinquency act has been or may be filed in tribal court, the juvenile court must stay (suspend) the proceeding and communicate with the tribal court to discuss whether the tribal court or juvenile court may be the more appropriate forum. If the juvenile court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the juvenile court that the tribal court would be the more appropriate forum, the juvenile court must either dismiss the delinquency petition or JIPS delinquency petition without prejudice or stay the proceeding. The juvenile court's decision must be based on the best interests of the juvenile and of the public.

If the juvenile court stays the proceeding, rather than dismissing the petition, the juvenile court's jurisdiction over the juvenile continues for one year after the last order affecting the stay is entered. During that time, a motion may be made by any of the parties to lift the stay order and have the juvenile court take further action. However, if the stay order remains in place, the petition will automatically be dismissed one year following the last court order.

if

plain bill

5. Venue

If a petition relating to the same delinquent act has been filed in tribal court, the ~~draft~~ prohibits venue for a delinquency proceeding or JIPS delinquency proceeding from being in the county where an American Indian juvenile resides (unless it is also either the county where the juvenile is present or the county where the violation occurred). In contrast, under current law, venue for a delinquency proceeding or JIPS delinquency proceeding may be in any of the following 3 county circuit courts: (a) the county where the juvenile resides; (b) the county where the juvenile is present; or (c) the county where the violation occurred.

(plain)

The bill

~~This draft~~ does not address the issue of possible concurrent tribal court jurisdiction and juvenile court jurisdiction if an American Indian juvenile commits a delinquent act either: (a) on a tribe's reservation or off-reservation trust land that is subject to Public Law 280 (that is, Indian country in Wisconsin, other than the Menominee Reservation); or (b) off a tribe's reservation and off-reservation trust land if the juvenile was not off the reservation or off-reservation trust land because of a tribal court order. The special committee has not been asked to address either issue.

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~~SECTION 1. 938.02 (12g) of the statutes is created to read.~~

~~938.02 (12g) "Off a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of a tribal court order" means physically outside the boundaries of a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence of a tribal court order. It includes circumstances in which an American Indian juvenile is outside the boundaries of a reservation and any off-reservation trust land of a tribe~~

1 or tribal member under a tribal court order temporarily placing the juvenile in the
 2 home of one of the juvenile's relatives who may not at the time of, or may not
 3 subsequent to, the tribal court order reside on a reservation or off-reservation trust
 4 land.

Federal government

5 SECTION 2. 938.02 (12m) of the statutes is created to read:

6 938.02 (12m) "Off-reservation trust land" means land in this state that is held
 7 in trust by the United States for the benefit of a tribe or an American Indian and that
 8 is located outside the boundaries of a tribe's reservation.

9 SECTION 3. 938.02 (15a) of the statutes is created to read:

10 938.02 (15a) "Reservation" means land in this state within the boundaries of
 11 the reservation of a tribe.

12 SECTION 4. 938.02 (18g) of the statutes is created to read:

13 938.02 (18g) "Tribe" means a federally recognized American Indian tribe or
 14 band in this state.

NOTE: SECTIONS 1 to 4 define "tribe", "reservation", "off-reservation trust land",
 and "off a tribe's reservation and any off-reservation trust land of either that tribe or a
 member of that tribe because of a tribal court order" in the general definitions section of
 ch. 938, stats. (the Juvenile Justice Code).

15 SECTION 5. 938.185 (1) (intro.) of the statutes is amended to read:

16 938.185 (1) (intro.) Subject to sub. subs. (3), and (4), venue for any proceeding
 17 under ss. 938.12, 938.125, 938.13, 938.135 and 938.18 may be in any of the following:

18 SECTION 6. 938.185 (4) of the statutes is created to read:

19 938.185 (4) Venue for a proceeding under s. 938.12 or 938.13 (12) based on an
 20 allegation that an American Indian juvenile has committed a delinquent act may not
 21 be in the county specified in sub. (1) (a), unless that county is specified in sub. (1) (b)
 22 or (c), if all of the following apply:

Circumstances

under par. (a), including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a

(a) At the time of the alleged delinquent act the juvenile was under an order of a tribe's court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

(b) At the time of the alleged delinquent act the juvenile was off that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order.

(c) A petition relating to the delinquent act has been filed in a tribal court that has jurisdiction over the juvenile.

NOTE: Eliminates the court of the county where an American Indian juvenile resides as the venue for a delinquency proceeding or JIPS delinquency proceeding (unless it is either the county where the juvenile is present or the county where the violation occurred), if the specified circumstances exist.

SECTION 7-938.24 (4m) of the statutes is created to read:

938.24 (4m) If the intake worker determines as a result of the intake inquiry that the juvenile is an American Indian, and that at the time of an alleged delinquent act, the juvenile was under an order of a tribe's court, other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was off that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order, the intake worker shall promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney.

If the intake worker is notified by an official of the tribe that a petition relating to the delinquent act has been or may be filed in tribal court, the intake worker shall consult with tribal officials. After the consultation, the intake worker shall determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served

5. unless the intake worker determines under sub. (4) that the case should be closed

reservation or off-reservation trust land

STET: leave as typed

STET: leave as typed

physically outside the boundaries of

who has allegedly committed a delinquent act

Circumstances

Stet: leave as typed

(2c) (a)

(2c)

Insert 5-18

all of the following apply

under subd. 1.

SECTION 7

per paragraph

1 by having the matter proceed solely in tribal court, the intake worker shall close the
2 case. If the intake worker determines that the best interests of the juvenile and of
3 the public would not be served by having the matter proceed solely in tribal court,
4 the intake worker shall proceed under sub. (3) or (4). ~~This subsection does not~~
5 ~~prohibit the intake worker from closing the case under sub. (4) without consultation.~~

NOTE: Under ^(plain) ~~current law~~ if a juvenile is alleged to have committed a delinquent act, information is referred to an intake worker who must conduct an intake inquiry ^{to} and determine whether the available facts establish on their face that the juvenile court has jurisdiction and also determine the best interests of the juvenile and of the public with regard to any action to be taken. An intake worker must do one of the following: (a) request that the district attorney file a delinquency petition ^{to} or for juveniles under 10 years of age, request that the district attorney (or the corporation counsel, if designated by the county board of supervisors) file a JIPS delinquency petition; (b) enter into a deferred prosecution agreement requiring the juvenile to undertake various actions; or (c) close the case. This generally must occur within 40 days of receipt of the referral information. An intake worker must perform his or her responsibilities under general written policies formulated by the circuit judges for the county, subject to approval of the chief judge of the judicial administrative district.

to handle JIPS delinquency cases

Under ^(plain) ~~current law~~ if an intake worker decides to close a delinquency or JIPS delinquency case, the intake worker must provide written notice to the district attorney (or corporation counsel if the juvenile is under 10 years of age and the county board has designated the corporation counsel to handle JIPS delinquency cases) and must attempt to provide written notice to all victims of the juvenile's act that the case is being closed. Even if the intake worker has closed the case, the district attorney may initiate a delinquency proceeding and the district attorney or the corporation counsel may initiate a JIPS delinquency proceeding if the juvenile is under 10 years of age. Except in certain circumstances, the petition must be filed within 20 days after the district attorney or corporation counsel has been notified that the case has been closed by the intake worker.

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This ^(bill) ~~draft~~ provides that if the intake worker determines as a result of the intake inquiry that the juvenile is an American Indian and that, at the time of an alleged delinquent act, the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was ~~off~~ ^{physically outside the boundaries of} that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney. If the intake worker is notified by a tribal official that a petition related to the delinquency has been or may be filed in tribal court, the intake worker must consult with tribal officials.

delete space

that the juvenile has allegedly committed a delinquent act under those circumstances

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, enter into a deferred prosecution agreement, request that a delinquency petition or JIPS

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delinquency petition be filed, or close the case. The ~~draft~~ specifies that the intake worker may close a case without consultation with tribal officials.

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The ~~draft~~ does not eliminate the intake worker's ~~duty~~ to inform the district attorney or corporation counsel that the case has been closed or the district attorney or corporation counsel's ~~authority~~ to initiate a delinquency proceeding or JIPS delinquency proceeding even though the intake worker has closed the case. It also does not eliminate the intake worker's duty to notify the victim of the delinquent act.

bill
The bill

authority of the

SECTION 8. 938.25 (2g) of the statutes is created to read:

(2c)

938.25 (2g) If the ~~intake worker~~ district attorney or corporation counsel has been notified that a petition relating to the alleged delinquent act has been or may be filed in tribal court under the circumstances described in s. 938.24 ~~that~~, the district attorney or corporation counsel shall attempt to consult with appropriate tribal officials before filing a petition under s. 938.12 or 938.13 (12).

NOTE: Requires the district attorney or corporation counsel to attempt to consult with appropriate tribal officials before filing a delinquency petition or JIPS delinquency petition under ~~certain~~ circumstances.

SECTION 9. 938.255 (1) (cr) of the statutes is created to read:

938.255 (1) (cr) 1. If the petition is initiating proceedings under s. 938.12 or 938.13 (12) and all of the following ~~circumstances~~ apply, a statement to that effect:

a. The juvenile is an American Indian.

b. At the time of the alleged delinquent act, the juvenile was under an order of a tribe's court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was off that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order.

Insert
7-15

2. If the statement under subd. 1. is included ~~and~~ if the intake worker, district attorney, or corporation counsel has been notified by an official of the tribe that a petition relating to the delinquent act has been or may be filed in tribal court with respect to the alleged delinquent act, a statement to that effect.

a juvenile to whom the circumstances specified in s. 938.255 (1)(cr)1. apply

the specified

NOTE: Requires that a delinquency petition or JIPS delinquency petition filed with respect to an American Indian juvenile include specific information if certain circumstances exist.

SECTION 10. 938.299 (9) of the statutes is created to read:

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938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the statement in s. 938.255(1)(cr)2 or if the court is informed during a proceeding under s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed in a tribe's court with respect to an American Indian who was under an order of the tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was off that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order when the delinquent act allegedly was committed, the court shall stay the proceeding and communicate with the tribal court in which the other proceeding is or may be pending to discuss which court may be the more appropriate forum.

(b) If the court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the court that the tribal court would be the more appropriate forum, the court shall dismiss the petition without prejudice or stay the proceeding. The court's decision shall be based on the best interests of the juvenile and of the public.

(c) If a stay is ordered under par. (b), jurisdiction of the court continues over the juvenile until one year has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the juvenile, the court may, on motion and notice to the parties, subsequently lift the stay order and take any further action in the proceeding as the interests of the juvenile and of the public require. When jurisdiction of the court over the juvenile terminates

9 -
order affecting the stay

the specified circumstances

1 by reason of the lapse of the one year following the last court order in the action, the
2 clerk of the court shall, without notice, enter an order dismissing the petition.

The bill

NOTE: Includes provisions relating to ^{procedure when} juvenile court ~~in~~ a delinquency or JIPS delinquency case involves an American Indian juvenile and ~~certain conditions~~ exist.

~~This draft~~ does not include details as to how the communication between the courts is to be conducted, for example, on or off the record, after a hearing, or with or without the parties present.

3 SECTION 11. 938.315 (1) ^{e i} (b) of the statutes is created to read:

4 938.315 (1) ^{e i} (b) Any period of delay resulting from consultation under s. 938.24

5 (2c) ~~(4m)~~ or 938.25 (2g).

any period of delay resulting from consultation by an intake worker, district attorney, or corporation counsel

NOTE: Provides that, in computing time periods under ch. 938, stats. (the Juvenile Justice Code), ~~the time for the intake worker's, district attorney's, or corporation counsel's consultation with tribal officials is not counted~~

with tribal officials is not counted

6 SECTION 12. Initial applicability. ^{A(1)} This act first applies to delinquent acts
7 committed on the effective date of this ^{sub} section. ^{bill first applies}

NOTE: Provides that the act's provisions apply to delinquent acts committed on ~~or~~ after the effective date of the ~~act~~ ^{bill}.

(END)

bill

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2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2553/lins
GMM.....

(INSERT 5-18)

no 9 that the juvenile has allegedly committed a delinquent act under those circumstances:

1. At the time of the delinquent act the juvenile was under an order of a tribe's court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

2. At the time of the delinquent act the juvenile was physically outside the boundaries of that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence of a tribal court order under subd. 1., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation or off-reservation trust land. ✓

(b)

[Handwritten signature]
(END OF INSERT)

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c. At the time of the delinquent act the juvenile was physically outside the boundaries of that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe as a direct consequence of a tribal court order under subd. 1. b., including a tribal court order placing the juvenile in the home of a relative of the juvenile who on or after the date of the tribal court order resides physically outside the boundaries of a reservation or off-reservation trust land. ✓

(END OF INSERT)

Insert 8-1

Section #. 938.255 (2) of the statutes is amended to read:

strike (Cr)

938.255 (2) If any of the facts in sub. (1) (a) to ~~(c)~~ and (f) are not known or cannot be ascertained by the petitioner, the petition shall so state.

History: 1995 a. 77, 352; 2001 a. 109.

(left rest)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2553/1dn
GMM.....

Joyce:

In reviewing the draft, please note all of the following:

1. The draft does not define "off a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of a tribal court order." At 26 words, the defined term is just too long. Moreover, the definition pretty much just paraphrases the term defined except that the definition substitutes "physically outside the boundaries of" for "off" and "as a direct consequence" for "because." Also, the definition includes the proviso about placement in the off-reservation home of a relative, which arguably is not even necessary because being off-reservation is already covered in the main part of the definition. Specifically, if the juvenile is off-reservation, he or she is off-reservation, regardless of whether he or she is living with a relative off-reservation. ←

The downside of not defining the term, of course, is that the entire definition has to be incorporated into the substantive provisions of the statutes. Accordingly, this draft breaks up ss. 938.24 (4m) and 938.255 (1) (cr) 1. b., as created by the WLCS draft, and substitutes a cross-reference for repetition of the language in s. 938.299 (9) (a), as created by the WLCS draft. ←

2. Because s. 938.24 (4m), as created by the WLCS draft, requires the intake worker to proceed under s. 938.24 (3) or (4), this draft numbers s. 938.24 (4m) as s. 938.24 (2r) instead, to maintain chronological order. →

3. Also, s. 938.24 (4m), as created by the WLCS draft, requires the intake worker to notify tribal officials, but does not specify of what those officials must be notified. Accordingly, this draft requires those officials to be notified that the juvenile has allegedly committed a delinquent act under the circumstances specified in the bill. ✓

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2553/ldn

GMM:cjs:rs

April 29, 2003

Joyce:

In reviewing the draft, please note all of the following:

1. The draft does not define "off a tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of a tribal court order." At 26 words, the defined term is just too long. Moreover, the definition pretty much just paraphrases the term defined except that the definition substitutes "physically outside the boundaries of" for "off" and "as a direct consequence" for "because." Also, the definition includes the proviso about placement in the off-reservation home of a relative, which arguably is not even necessary because being off-reservation is already covered in the main part of the definition. Specifically, if the juvenile is off-reservation, he or she is off-reservation, regardless of whether he or she is living with a relative off-reservation.

The downside of not defining the term, of course, is that the entire definition has to be incorporated into the substantive provisions of the statutes. Accordingly, this draft breaks up ss. 938.24 (4m) and 938.255 (1) (cr) 1. b., as created by the WLCS draft, and substitutes a cross-reference for repetition of the language in s. 938.299 (9) (a), as created by the WLCS draft.

2. Because s. 938.24 (4m), as created by the WLCS draft, requires the intake worker to proceed under s. 938.24 (3) or (4), this draft numbers s. 938.24 (4m) as s. 938.24 (2r) instead, to maintain chronological order.

3. Also, s. 938.24 (4m), as created by the WLCS draft, requires the intake worker to notify tribal officials, but does not specify of what those officials must be notified. Accordingly, this draft requires those officials to be notified that the juvenile has allegedly committed a delinquent act under the circumstances specified in the bill.

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

From: Kiel, Joyce
Sent: Thursday, May 08, 2003 1:06 PM
To: Malaise, Gordon
Cc: Lovell, David
Subject: Re-draft Request for LRB-2553/1

Gordon:

In addition to the few other changes I called you about, would you please make the following changes (with any improvements you see as appropriate):

1. Replace the statutory change in Section 7 with the following:

938.25 (2g) If the circumstances described in s. 938.24 (2r) (a) exist, before filing a petition under s. 938.12 or 938.13 (12) the district attorney or corporation counsel shall do all of the following:

(a) Obtain information from the intake worker regarding any notification by a tribal official under s. 938.24 (2r) (b).

(b) If the intake worker or a tribal official has notified the district attorney or corporation counsel that a petition relating to the alleged delinquent act has been or may be filed in tribal court, attempt to consult with appropriate tribal officials.

I think the note that goes with Section 7 is still okay.

2. On pages 2 and 3, replace item 2 in the pref note with the following:

2. Duties of District Attorney or Corporation Counsel

Under current law, a district attorney may file a delinquency petition and either the district attorney or corporation counsel (depending on the county) may file a JIPS delinquency petition based on the request of the intake worker or after the intake worker has closed the case. The bill provides that, if the specified circumstances exist, before filing a such a petition, the district attorney or corporation counsel must: (a) obtain information from the intake worker regarding whether a tribal official notified the intake worker that a petition relating to the alleged delinquent act has been or may be filed in tribal court; and (b) attempt to consult with appropriate tribal officials if the intake worker or a tribal official has notified the district attorney or corporation counsel that a petition relating to the alleged delinquent act has been or may be filed in tribal court.

Let me know if you have questions or ideas for changing this.

Thanks a lot.

Joyce L. Kiel, Senior Staff Attorney
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State of Wisconsin
2003 - 2004 LEGISLATURE

SUGN

LRB-2553/1
GMM:cjs:1
Stays
2
RMR

SAV

2003 BILL

Repealed.

1 AN ACT to amend 938.185 (1) (intro.) and 938.255 (2); and to create 938.02
2 (12m), 938.02 (15c), 938.02 (18g), 938.185 (4), 938.24 (2r), 938.25 (2g), 938.255
3 (1) (cr), 938.299 (9) and 938.315 (1) (i) of the statutes; relating to: proceedings
4 involving an American Indian juvenile who is alleged to have committed a
5 delinquent act while physically outside the boundaries of a reservation and
6 off-reservation trust land because of certain tribal court orders.

Analysis by the Legislative Reference Bureau

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

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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on State-Tribal Relations. The bill relates to proceedings involving an American Indian juvenile (age 16 or under for violations of criminal laws) who is alleged to have committed a delinquent act while physically outside the boundaries of the reservation of a federally recognized American Indian tribe or band

BILL

in this state (tribe) and any off-reservation trust land of either a tribe or tribal member because of an order issued by a court of that tribe, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship.

The Menominee Indian Tribe of Wisconsin originally proposed that the 2000-02 Special Committee on State-Tribal Relations address the issue following the Wisconsin Court of Appeals decision in *In the Interest of Elmer J.K. III*, 224 Wis. 2d 372, 591 N.W.2d 176 (Wis. Ct. App. 1999). That case involved a Menominee juvenile who had been adjudicated delinquent by the Menominee Tribal Court and placed by the tribal court in a residential facility outside the boundaries of the Menominee Reservation and who then engaged in disorderly conduct and battery to staff members at the residential facility in violation of several Wisconsin criminal statutes. The *Elmer J.K.* court held that the state court had jurisdiction and stated that the Menominee Tribal Court did not have jurisdiction.

The jurisdiction of a tribal court is determined by federal law and tribal law, rather than state law. This bill does not alter, diminish, or expand the jurisdiction of either the state courts or tribal courts. Rather, the bill provides a process for consultation to determine which government should exercise its existing jurisdiction based on the best interests of the juvenile and of the public.

The bill includes the following provisions relating to an American Indian juvenile who allegedly commits a delinquent act and, at the time of the alleged delinquent act was both: (a) under an order of a tribal court, other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship; and (b) physically outside the boundaries of that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe because of the tribal court order (specified circumstances):

1. Duties of Juvenile Court Intake Worker

If the intake worker of the court assigned to exercise jurisdiction under the Children's Code and the Juvenile Justice Code (juvenile court) determines in the intake inquiry that the specified circumstances exist, the juvenile court intake worker (intake worker) must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under the specified circumstances. If the intake worker is notified by a tribal official that a petition related to the delinquent act has been or may be filed in tribal court, the intake worker must consult with tribal officials.

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter proceed solely in tribal court, the intake worker must, as under current law, do one of the following: (a) enter into a deferred prosecution agreement; (b) request that the district attorney file a delinquency petition or, if the juvenile is under 10 years of age, request that the district attorney or corporation counsel file a juvenile in need of protection or services (JIPS) delinquency petition; or (c) close the case. (The county board determines whether the district attorney or corporation counsel handles JIPS cases in the county.) The bill specifies that the intake worker may close a case without consultation with tribal officials.

2. Duties of District Attorney or Corporation Counsel

If the district attorney or corporation counsel has been notified that a petition relating to the alleged delinquent act has been or may be filed in tribal court, the district attorney must attempt to consult with appropriate tribal officials before filing a

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delinquency petition or JIPS delinquency petition in the juvenile court, or, if the county board has designated the corporation counsel to handle JIPS delinquency cases, the corporation counsel must attempt to consult with appropriate tribal officials before filing a JIPS delinquency petition.

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3. Delinquency or JIPS Delinquency Petition

If a decision is made to file a delinquency petition or JIPS delinquency petition in juvenile court, the petition must include a statement that the specified circumstances exist. In addition, the petition also must include a statement that a petition has been or may be filed in tribal court relating to the same delinquent act if a tribal official has informed the intake worker, district attorney, or corporation counsel that that is the case.

4. Juvenile Court Procedure

If the juvenile court is informed during a delinquency proceeding or JIPS delinquency proceeding that a petition relating to the same delinquent act has been or may be filed in tribal court, the juvenile court must stay (suspend) the proceeding and communicate with the tribal court to discuss whether the tribal court or juvenile court may be the more appropriate forum. If the juvenile court and tribal court either mutually agree or agree under the terms of an established judicial protocol applicable to the juvenile court that the tribal court would be the more appropriate forum, the juvenile court must either dismiss the delinquency petition or JIPS delinquency petition without prejudice or stay the proceeding. The juvenile court's decision must be based on the best interests of the juvenile and of the public.

If the juvenile court stays the proceeding, rather than dismissing the petition, the juvenile court's jurisdiction over the juvenile continues for one year after the last order affecting the stay is entered. During that time, a motion may be made by any of the parties to lift the stay order and have the juvenile court take further action. If, however, the stay order remains in place, the petition will automatically be dismissed one year following the last court order.

5. Venue

If a petition relating to the same delinquent act has been filed in tribal court, the bill prohibits venue for a delinquency proceeding or JIPS delinquency proceeding from being in the county where an American Indian juvenile resides (unless it is also either the county where the juvenile is present or the county where the violation occurred). In contrast, under current law, venue for a delinquency proceeding or JIPS delinquency proceeding may be in any of the following 3 county circuit courts: (a) the county where the juvenile resides; (b) the county where the juvenile is present; or (c) the county where the violation occurred.

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The bill does *not* address the issue of possible concurrent tribal court jurisdiction and juvenile court jurisdiction if an American Indian juvenile commits a delinquent act either: (a) *on* a tribe's reservation or off-reservation trust land that is subject to Public Law 280 (that is, Indian country in Wisconsin, other than the Menominee Reservation); or (b) *off* a tribe's reservation and off-reservation trust land if the juvenile was not off the reservation or off-reservation trust land because of a tribal court order. The special committee has not been asked to address either issue.

- 1 **SECTION 1.** 938.02 (12m) of the statutes is created to read:
- 2 **938.02 (12m)** "Off-reservation trust land" means land in this state that is held
- 3 in trust by the federal government for the benefit of a tribe or an American Indian
- 4 and that is located outside the boundaries of a tribe's reservation.

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1 **SECTION 2.** 938.02 (15c) of the statutes is created to read:

2 938.02 (15c) “Reservation” means land in this state within the boundaries of
3 the reservation of a tribe.

4 **SECTION 3.** 938.02 (18g) of the statutes is created to read:

5 938.02 (18g) “Tribe” means a federally recognized American Indian tribe or
6 band in this state.

NOTE: SECTIONS 1 to 3 define “tribe”, “reservation”, and “off-reservation trust
land”, in the general definitions section of ch. 938, stats. (the Juvenile Justice Code).

7 **SECTION 4.** 938.185 (1) (intro.) of the statutes is amended to read:

8 938.185 (1) (intro.) Subject to ~~sub.~~ subs. (3); and (4), venue for any proceeding
9 under ss. 938.12, 938.125, 938.13, 938.135, and 938.18 may be in any of the following:

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

11 938.185 (4) Venue for a proceeding under s. 938.12 or 938.13 (12) based on an
12 allegation that an American Indian juvenile has committed a delinquent act may not
13 be in the county specified in sub. (1) (a), unless that county is specified in sub. (1) (b)
14 or (c), if all of the following circumstances apply:

15 (a) At the time of the alleged delinquent act the juvenile was under an order
16 of a tribe’s court, other than a tribal court order relating to adoption, physical
17 placement or visitation with the juvenile’s parent, or permanent guardianship.

18 (b) At the time of the alleged delinquent act the juvenile was physically outside
19 the boundaries of that tribe’s reservation and any off-reservation trust land of either
20 that tribe or a member of that tribe as a direct consequence of a tribal court order
21 under par. (a), including a tribal court order placing the juvenile in the home of a
22 relative of the juvenile who on or after the date of the tribal court order resides
23 physically outside the boundaries of a reservation or off-reservation trust land.

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1 (c) A petition relating to the delinquent act has been filed in a tribal court that
2 has jurisdiction over the juvenile.

NOTE: Eliminates the court of the county where an American Indian juvenile resides as the venue for a delinquency proceeding or JIPS delinquency proceeding (unless it is either the county where the juvenile is present or the county where the violation occurred), if the specified circumstances exist.

3 **SECTION 6.** 938.24 (2r) of the statutes is created to read:

4 938.24 (2r) (a) If the intake worker determines as a result of the intake inquiry
5 that the juvenile is an American Indian who has allegedly committed a delinquent
6 act and that all of the following circumstances apply, the intake worker shall
7 promptly notify the clerk of the tribal court under subd. 1., a person who serves as
8 the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile
9 has allegedly committed a delinquent act under those circumstances:

10 1. At the time of the delinquent act the juvenile was under an order of a tribe's
11 court, other than a tribal court order relating to adoption, physical placement or
12 visitation with the juvenile's parent, or permanent guardianship.

13 2. At the time of the delinquent act the juvenile was physically outside the
14 boundaries of that tribe's reservation and any off-reservation trust land of either
15 that tribe or a member of that tribe as a direct consequence of a tribal court order
16 under subd. 1., including a tribal court order placing the juvenile in the home of a
17 relative of the juvenile who on or after the date of the tribal court order resides
18 physically outside the boundaries of a reservation ^{and} ~~of~~ off-reservation trust land.

19 (b) If the intake worker is notified by an official of the tribe that a petition
20 relating to the delinquent act has been or may be filed in tribal court, the intake
21 worker shall consult with tribal officials, unless the intake worker determines under
22 sub. (4) that the case should be closed. After the consultation, the intake worker shall
23 determine whether the best interests of the juvenile and of the public would be served

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1 by having the matter proceed solely in tribal court. If the intake worker determines
 2 that the best interests of the juvenile and of the public would be served by having the
 3 matter proceed solely in tribal court, the intake worker shall close the case. If the
 4 intake worker determines that the best interests of the juvenile and of the public
 5 would not be served by having the matter proceed solely in tribal court, the intake
 6 worker shall proceed under sub. (3) or (4).

NOTE: Under current law, if a juvenile is alleged to have committed a delinquent act, information is referred to an intake worker who must conduct an intake inquiry to determine whether the available facts establish on their face that the juvenile court has jurisdiction and also to determine the best interests of the juvenile and of the public with regard to any action to be taken. An intake worker must do one of the following: (a) request that the district attorney file a delinquency petition or, for juveniles under 10 years of age, request that the district attorney (or the corporation counsel, if designated by the county board of supervisors to handle JIPS delinquency cases) file a JIPS delinquency petition; (b) enter into a deferred prosecution agreement requiring the juvenile to undertake various actions; or (c) close the case. This generally must occur within 40 days of receipt of the referral information. An intake worker must perform his or her responsibilities under general written policies formulated by the circuit judges for the county, subject to approval of the chief judge of the judicial administrative district.

Under current law, if an intake worker decides to close a delinquency or JIPS delinquency case, the intake worker must provide written notice to the district attorney (or corporation counsel if the juvenile is under 10 years of age and the county board has designated the corporation counsel to handle JIPS delinquency cases) and must attempt to provide written notice to all victims of the juvenile's act that the case is being closed. Even if the intake worker has closed the case, the district attorney may initiate a delinquency proceeding and the district attorney or the corporation counsel may initiate a JIPS delinquency proceeding if the juvenile is under 10 years of age. Except in certain circumstances, the petition must be filed within 20 days after the district attorney or corporation counsel has been notified that the case has been closed by the intake worker.

This bill provides that if the intake worker determines as a result of the intake inquiry that the juvenile is an American Indian and that, at the time of an alleged delinquent act, the juvenile was under an order of a tribal court, other than a tribal court order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship, and was physically outside the boundaries of that tribe's reservation and any off-reservation trust land of either that tribe or a member of that tribe ~~because~~ of the tribal court order, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile intake worker, or a tribal prosecuting attorney that the juvenile has allegedly committed a delinquent act under ~~those~~ circumstances. If the intake worker is notified by a tribal official that a petition related to the delinquency has been or may be filed in tribal court, the intake worker must consult with tribal officials.

After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If the intake worker determines that the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court, the intake worker must close the case. If the intake worker determines that the best interests of the juvenile and of the public would not be served by having the matter

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proceed solely in tribal court, the intake worker must, as under current law, enter into a deferred prosecution agreement, request that a delinquency petition or JIPS delinquency petition be filed, or close the case. The bill specifies that the intake worker may close a case without consultation with tribal officials.

The bill does *not* eliminate the duty of the intake worker to inform the district attorney or corporation counsel that the case has been closed or the authority of the district attorney or corporation counsel to initiate a delinquency proceeding or JIPS delinquency proceeding even though the intake worker has closed the case. The bill also does *not* eliminate the intake worker's duty to notify the victim of the delinquent act.

1 **SECTION 7.** 938.25 (2g) of the statutes is created to read:

2 ~~938.25 (2g) If the district attorney or corporation counsel has been notified that~~
3 ~~a petition relating to an alleged delinquent act has been or may be filed in tribal court~~
4 ~~under the circumstances described in s. 938.24 (2r), the district attorney or~~
5 ~~corporation counsel shall attempt to consult with appropriate tribal officials before~~
6 ~~filing a petition under s. 938.12 or 938.13 (12).~~

NOTE: Requires the district attorney or corporation counsel to attempt to consult with appropriate tribal officials before filing a delinquency petition or JIPS delinquency petition under the specified circumstances.

7 **SECTION 8.** 938.255 (1) (cr) of the statutes is created to read:

8 938.255 (1) (cr) 1. If the petition is initiating proceedings under s. 938.12 or
9 938.13 (12) and all of the following circumstances apply, a statement to that effect:

10 a. The juvenile is an American Indian.

11 b. At the time of the alleged delinquent act, the juvenile was under an order
12 of a tribe's court, other than a tribal court order relating to adoption, physical
13 placement or visitation with the juvenile's parent, or permanent guardianship.

14 c. At the time of the delinquent act the juvenile was physically outside the
15 boundaries of that tribe's reservation and any off-reservation trust land of either
16 that tribe or a member of that tribe as a direct consequence of a tribal court order
17 under subd. 1. b., including a tribal court order placing the juvenile in the home of
18 a relative of the juvenile who on or after the date of the tribal court order resides
19 physically outside the boundaries of a reservation or off-reservation trust land.

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1 2. If the statement under subd. 1. is included in the petition and if the intake
2 worker, district attorney, or corporation counsel has been notified by an official of the
3 tribe that a petition relating to the delinquent act has been or may be filed in tribal
4 court with respect to the alleged delinquent act, a statement to that effect.

NOTE: Requires that a delinquency petition or JIPS delinquency petition filed with respect to an American Indian juvenile include specific information if the specified circumstances exist.

5 **SECTION 9.** 938.255 (2) of the statutes is amended to read:

6 938.255 (2) If any of the facts in sub. (1) (a) to ~~(em)~~ (cr) and (f) are not known
7 or cannot be ascertained by the petitioner, the petition shall so state.

8 **SECTION 10.** 938.299 (9) of the statutes is created to read:

9 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the
10 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under
11 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed
12 in a tribe's court with respect to a juvenile to whom the circumstances specified in
13 s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate with
14 the tribal court in which the other proceeding is or may be pending to discuss which
15 court may be the more appropriate forum.

16 (b) If the court and tribal court either mutually agree or agree under the terms
17 of an established judicial protocol applicable to the court that the tribal court would
18 be the more appropriate forum, the court shall dismiss the petition without prejudice
19 or stay the proceeding. The court's decision shall be based on the best interests of the
20 juvenile and of the public.

21 (c) If a stay is ordered under par. (b), jurisdiction of the court continues over the
22 juvenile until one year has elapsed since the last order affecting the stay was entered
23 in the court. At any time during which jurisdiction of the court continues over the

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1 juvenile, the court may, on motion and notice to the parties, subsequently lift the stay
2 order and take any further action in the proceeding as the interests of the juvenile
3 and of the public require. When jurisdiction of the court over the juvenile terminates
4 by reason of the lapse of the one year following the last order affecting the stay, the
5 clerk of the court shall, without notice, enter an order dismissing the petition.

NOTE: Includes provisions relating to juvenile court procedure when a delinquency or JIPS delinquency case involves an American Indian juvenile and the specified circumstances exist.

The bill does not include details as to how the communication between the courts is to be conducted, for example, on or off the record, after a hearing, or with or without the parties present.

6 **SECTION 11.** 938.315 (1) (i) of the statutes is created to read:

7 938.315 (1) (i) Any period of delay resulting from consultation under s. 938.24
8 (2r) or 938.25 (2g).

NOTE: Provides that any period of delay resulting from consultation by an intake worker, district attorney, or corporation counsel with tribal officials is not counted in computing time periods under ch. 938, stats. (the Juvenile Justice Code).

9 **SECTION 12. Initial applicability.**

10 (1) This act first applies to delinquent acts committed on the effective date of
11 this subsection.

NOTE: Provides that the bill first applies to delinquent acts committed on the effective date of the bill.

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938.25 (2g) If the circumstances described in s. 938.24 (2r) (a) apply, before filing a petition under s. 938.12 or 938.13 (12) the district attorney or corporation counsel shall determine whether the intake worker has received notification under s. 938.24 (2r) (b) from a tribal official that a petition relating to the alleged delinquent act has been or may be filed in tribal court. If the intake worker has received that notification or if a tribal official has provided that notification directly to the district attorney or corporation counsel, the district attorney or corporation counsel shall attempt to consult with ~~the~~ appropriate tribal officials before filing a petition under s. 938.12 or 938.13 (12).

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→ Under current law, a district attorney may file a delinquency petition in the juvenile court, and either the district attorney or corporation counsel (as determined by the county board) may file a JIPS delinquency petition in the juvenile court, based on the request of the intake worker or after the intake worker has closed the case. The bill provides that, if the specified circumstances apply, before filing such a petition the district attorney or corporation counsel must determine whether the intake worker has received notification from a tribal official that a petition relating to the alleged delinquent act has been or may be filed in tribal court. If the intake worker has received that notification or if a tribal official has provided that notification directly to the district attorney or corporation counsel, the district attorney or corporation counsel must attempt to consult with appropriate tribal officials before filing the delinquency or JIPS delinquency petition in juvenile court.

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