

1       **AN ACT** *to amend* 165.83 (1) (e), 165.85 (2) (g), 340.01 (3) (b), 341.17 (9) (c) 2.,  
 2           343.235 (3) (a), 343.237 (4) and 939.22 (22); and *to create* 165.83 (1) (e) 2., 165.85  
 3           (2) (g) 2., 175.41, 341.17 (4) (h), 343.237 (1) (aj), 343.237 (1) (am) and 946.09 of  
 4           the statutes; **relating to:** conservation wardens employed by the great lakes Indian  
 5           fish and wildlife commission.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft, prepared for the joint legislative council’s special committee on state–tribal relations, extends the application of a broad range of statutes related to law enforcement to conservation wardens employed by the great lakes Indian fish and wildlife commission (GLIFWC).

**BACKGROUND**

In the 1970s and 1980s, litigation in federal court sought to determine the extent of rights for the harvest of natural resources retained by the Chippewa Indian bands when the bands ceded territory to the United States in treaties from 1836 to 1854. In a series of orders, the court affirmed the bands’ continuing rights to hunt, fish, and gather on the Chippewa reservations and on public lands not on reservations throughout the ceded territories in northern Wisconsin. Among other things, the court approved the Chippewa bands’ proposal to adopt an off–reservation conservation code governing their members’ exercise of those rights within the ceded territory but not on any Chippewa reservation, and to form an inter–tribal agency to enforce that code.

GLIFWC is the agency the Chippewa bands created for this purpose. It employs conservation wardens in Wisconsin to enforce the off–reservation code. According to GLIFWC staff, all of the current GLIFWC wardens in Wisconsin have met the same training requirements that any officer hired by a state or local law enforcement agency must meet.

In 2003, a GLIFWC warden working off–reservation in Forest County arrested a non–Indian person for a firearms violation and delivered the individual to the county sheriff. In reviewing the case, the Forest County

district attorney concluded that the warden had acted without authority in stopping and arresting the individual. He also questioned the legality of other aspects of the warden's behavior, such as going armed in the uniform of a law enforcement officer in a vehicle with equipment, such as lights and siren, that are generally illegal. Anticipating that the court would not admit evidence from this unauthorized stop and arrest, the district attorney did not file charges in this case.

This case brought to attention that much of what GLIFWC wardens do is not contemplated under the statutes and that, in fact, the statutes could be read as prohibiting GLIFWC wardens from doing many things that the federal court authorized them to do. Similarly, many statutes that serve to protect the physical safety of law enforcement officers and others that serve to protect the interests of the public do not apply to GLIFWC wardens. The great majority of these statutes *do* apply to conservation wardens employed by the department of natural resources (DNR).

GLIFWC, with support from the DNR and the department of justice (DOJ), asked the special committee on state-tribal relations to study this issue and to develop legislation that both removes statutory impediments to the work of GLIFWC wardens and extends protections to them. GLIFWC also noted that its wardens are potentially valuable allies to officers in the field, and requested that the legislation also authorize them to render aid and assistance to state and local law enforcement officers and to make arrests in certain circumstances.

#### **THE DRAFT**

The draft authorizes GLIFWC and its wardens to use the transaction information for management of enforcement (TIME) system if GLIFWC agrees to contribute information in its possession to DOJ for addition to the TIME system. (The TIME system allows officers in the field to access information regarding criminal investigations, suspected criminals, outstanding warrants, etc., as well as drivers' license and vehicle registration information, using computers installed in their patrol vehicles.)

The draft applies the statutes administered by the law enforcement standards board (LESB), to GLIFWC wardens who agree to accept the duties of law enforcement officers under the laws of this state, which makes a GLIFWC warden subject to the rules and certification procedures of the LESB.

The draft authorizes a GLIFWC warden to make an arrest if the warden is responding to either: (a) an emergency situation that poses a significant threat to life or of bodily harm; or (b) acts that the warden believes, on reasonable grounds, constitute a felony. The draft also

authorizes a GLIFWC warden to render aid or assistance to a Wisconsin peace officer in an emergency or at the request of the Wisconsin peace officer. A GLIFWC warden may take these actions only if all of the following conditions are met:

- (a) The warden is on duty and on official business.
- (b) The warden meets the training standards for state and local law enforcement officers and has agreed to accept the duties of law enforcement officers under the laws of this state.
- (c) GLIFWC has adopted and implemented written policies regarding making felony arrests under state law and rendering aid or assistance to state or local officers.
- (d) GLIFWC maintains public liability insurance that does all of the following:
  1. Covers GLIFWC's liability up to an amount specified in the draft for the acts of its wardens acting under this authority.
  2. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured.

The draft also authorizes GLIFWC wardens to engage in fresh pursuit in Wisconsin beyond the ceded territory under specified circumstances.

The draft authorizes GLIFWC to receive from the department of transportation (DOT) monthly compilations of vehicle registration information, drivers license and identification card photographs, and other identifying information in much the same manner that sheriffs and chiefs of local police departments, among others, currently receive this information.

The draft adds GLIFWC wardens' vehicles to the definition of "authorized emergency vehicle". The result is that many statutes regarding rules of the road, vehicle equipment, and related topics that are specific to authorized emergency vehicles apply to GLIFWC wardens' vehicles, as well. See the NOTES in the text of the draft for a list of specific statutes affected by this provision.

The draft adds GLIFWC wardens to the definition of "peace officer" for purposes of the criminal code. The result is to apply to GLIFWC wardens a wide range of statutes in the criminal code and in other chapters. The statutes affected include those that grant various powers or privileges to peace officers, establish responsibilities of peace officers, and protect the physical security of peace officers. See the NOTES in the text of the draft for a list of specific statutes affected by this provision. Also, the notes identify a number of statutes that would *not* apply to

GLIFWC wardens as a result of this definition, but that the committee may want to apply to them by other means. The draft does *not* add GLIFWC wardens to the definition of “peace officer” that is used in the statutes governing criminal procedures and related topics. In addition, there are an unknown number of other statutes affecting peace officers that the draft does not attempt to address.

The draft applies statutory prohibitions regarding bribery and official misconduct to GLIFWC wardens in the same manner that these prohibitions apply to public officers and public employees of the state and local governments.

1           **SECTION 1.** 165.83 (1) (e) of the statutes is amended to read:

2           165.83 (1) (e) “Tribal law enforcement agency” means ~~an~~ any of the following:

3           1. An agency of a tribe that is established for the purpose of preventing and detecting  
4 crime on the reservation or trust lands of the tribe and enforcing the tribe’s laws or ordinances,  
5 that employs full time one or more persons who are granted law enforcement and arrest powers  
6 under s. 165.92 (2) (a) and that was created by a tribe that agrees that its law enforcement  
7 agency will perform the duties required of the agency under this section and s. 165.84.

8           **SECTION 2.** 165.83 (1) (e) 2. of the statutes is created to read:

9           165.83 (1) (e) 2. The great lakes Indian fish and wildlife commission, if the great lakes  
10 Indian fish and wildlife commission agrees to perform the duties required under this section  
11 and s. 165.84.

**NOTE:** The definition change made by SECTIONS 1 and 2 gives GLIFWC and its wardens access to the TIME system in exchange for GLIFWC accepting the duty to provide identification information to the DOJ for inclusion in the TIME system.

12           **SECTION 3.** 165.85 (2) (g) of the statutes is amended to read:

13           165.85 (2) (g) “Tribal law enforcement officer” means a any of the following:

14           1. A person who is employed by a tribe for the purpose of detecting and preventing  
15 crime and enforcing the tribe’s laws or ordinances, who is authorized by the tribe to make

1 arrests of Indian persons for violations of the tribe's laws or ordinances and who agrees to  
2 accept the duties of law enforcement officers under the laws of this state.

3 **SECTION 4.** 165.85 (2) (g) 2. of the statutes is created to read:

4 165.85 (2) (g) 2. A conservation warden employed by the great lakes Indian fish and  
5 wildlife commission who agrees to accept the duties of law enforcement officers under the  
6 laws of this state.

**NOTE:** The definition change made by SECTIONS 3 and 4 subjects  
GLIFWC wardens who agree to accept the duties of law enforcement  
officers to the rules and certification procedures of the law enforcement  
standards board, which is a prerequisite for exercising the authority to  
make arrests for violations of state law and to render aid or assistance  
under s. 175.41, as created by this draft.

7 **SECTION 5.** 175.41 of the statutes is created to read:

8 **175.41 Arrest and assistance; GLIFWC wardens. (1)** In this subsection:

9 (a) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa Indians  
10 to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842, 7 Stat. 591.

11 (b) "GLIFWC" means the great lakes Indian fish and wildlife commission.

12 (c) "GLIFWC warden" means a conservation warden employed by GLIFWC.

13 (2) For purposes of civil and criminal liability, any GLIFWC warden may, when in fresh  
14 pursuit, follow anywhere in the state and arrest any person for the violation of [any law or  
15 ordinance the warden is authorized to enforce] [the chippewa off-reservation conservation  
16 code] if the conditions of sub. (3) (a), (c), and (e) are met.

17 (3) Within the ceded territory, a GLIFWC warden may arrest a person for violation of  
18 state law or provide aid or assistance to a Wisconsin peace officer if the criteria in pars. (a) to  
19 (e) are met:

20 (a) The warden is on duty and on official business.

- 1 (b) Any of the following apply:
- 2 1. The warden is responding to any of the following:
- 3 a. An emergency situation that poses a significant threat to life or of bodily harm.
- 4 b. Acts that the warden believes, on reasonable grounds, constitute a felony.
- 5 2. The warden is rendering aid or assistance to a Wisconsin peace officer in an
- 6 emergency or at the request of the Wisconsin peace officer.
- 7 (c) The warden meets the requirements of s. 165.85 (4) (b) 1., (bn) 1., and (c) and has
- 8 agreed to accept the duties of a law enforcement officer under the laws of this state.
- 9 (d) GLIFWC has adopted and implemented written policies regarding making arrests
- 10 and rendering aid or assistance under this subsection, including a policy on notification to and
- 11 cooperation with the law enforcement agency of the jurisdiction in which such arrests are
- 12 made.
- 13 (e) GLIFWC maintains public liability insurance, and provides evidence of the
- 14 insurance to [the department of justice] [the department of natural resources], that does all of
- 15 the following:
- COMMENT:** Should GLIFWC be required to show evidence of its liability insurance? If so, to what agency?
- 16 1. Covers GLIFWC's liability under sub. (4) with a limit of not less than [\$250,000]
- 17 [\$1,000,000] [\$2,000,000] [other] for any claim.

**NOTE:** The option for a \$250,000 minimum is based on the state's partial waiver of sovereign immunity in s. 893.82 (6), stats., which allows claims against the state up to \$250,000 for damages or injury arising from the actions or negligence of a state officer, employee, or agent. The option for a \$1,000,000 limit is based on the liability insurance that the Oneida Tribe has agreed to maintain in order for its police officers to enforce state laws on its reservation under s. 165.92, stats., established in a resolution adopted by the Oneida business committee and approved by the DOJ. The option for \$2,000,000 is based on the coverage of GLIFWC's current liability insurance policy.

1           2. Provides that the insurer, in defending a claim against the policy, may not raise the  
2 defense of sovereign immunity of the insured.

3           (4) Except as otherwise provided in an agreement between GLIFWC and the state or  
4 a subdivision of the state, GLIFWC is liable for all acts of a GLIFWC warden while acting  
5 under sub. (2) or (3) and neither the state nor any political subdivision of the state may be held  
6 liable for any action of a GLIFWC warden taken under the authority of sub. (2) or (3). For  
7 purposes of civil and criminal liability, a GLIFWC warden acting under sub. (2) or (3) is  
8 considered to be acting in an official capacity.

9           **SECTION 6.** 340.01 (3) (b) of the statutes is amended to read:

10           340.01 (3) (b) Conservation wardens' vehicles, vehicles of conservation wardens  
11 employed by the great lakes Indian fish and wildlife commission, or foresters' trucks, whether  
12 publicly or privately owned.

**NOTE:** Adds GLIFWC wardens' vehicles to the definition of "authorized emergency vehicle". This definition change treats GLIFWC wardens' vehicles as authorized emergency vehicles in the following statutes:

Rules of the road, etc.:

Section 346.03, stats., exception to rules regarding parking and traffic movement (e.g., speed, stopping, and turning).

Section 346.072, stats., passing stopped authorized emergency vehicles.

Sections 346.19 and 346.195, stats., what to do on approach of an emergency vehicle; liability for failure to yield.

Section 346.20 (2) and (4) (a), stats., may interrupt a funeral procession or military convoy.

Section 346.455, stats., yield to authorized emergency vehicle backing into firestation.

Section 346.90, stats., following emergency vehicles prohibited.

Vehicle equipment, etc.:

Section 346.88 (4) (d), stats., signal light not an obstruction to driver's view.

Section 346.94 (16), stats., exception from limits on radios and other electric sound amplification devices.

Section 347.25 (1), stats., certain special warning lamps allowed (red and blue combination *not* allowed for wardens' vehicles, nor pulsing headlights).

Section 347.38 (4), stats., sirens allowed.

Section 347.45 (2) (c) 2., stats., certain tires allowed for traction.

Section 347.48 (2m) (dm), stats., exception to required use of seat belts.

Section 348.18, stats., exception to weight limits.

Section 349.135, stats., exemption from municipal regulation of radios and other sound amplification systems.

1       **SECTION 7.** 341.17 (4) (h) of the statutes is created to read:

2       341.17 (4) (h) To the great lakes Indian fish and wildlife commission, one copy of each  
3       automobile registration list under sub. 1.

4       **SECTION 8.** 341.17 (9) (c) 2. of the statutes is amended to read:

5       341.17 (9) (c) 2. A law enforcement agency, a state authority, ~~or~~ a federal governmental  
6       agency, or the great lakes Indian fish and wildlife commission to perform a legally authorized  
7       function.

**NOTE:** Section 341.17, stats., directs the DOT to periodically compile a list of motor vehicle registrations and to make the list available at no charge to listed entities, including law enforcement agencies. It generally prohibits the release of identifying information contained in the lists, but allows the release of identifying information to listed entities, including law enforcement agencies. SECTIONS 7 and 8 add GLIFWC to the lists of entities that must receive free copies of the lists and who may receive identifying information in the lists.

8       **SECTION 9.** 343.235 (3) (a) of the statutes is amended to read:

9       343.235 (3) (a) A law enforcement agency, a state authority, ~~or~~ a federal governmental  
10       agency, or the great lakes Indian fish and wildlife commission to perform a legally authorized  
11       function.

**NOTE:** This provision gives GLIFWC the same access to personal identifying information in the records of the DOT as current law gives to law enforcement agencies, state authorities, and federal governmental agencies.

1           **SECTION 10.** 343.237 (1) (aj) of the statutes is created to read:

2           343.237 (1) (aj) “GLIFWC” means the great lakes Indian fish and wildlife commission.

3           **SECTION 11.** 343.237 (1) (am) of the statutes is created to read:

4           343.237 (1) (am) “Law enforcement agency” includes GLIFWC.

5           **SECTION 12.** 343.237 (4) of the statutes is amended to read:

6           343.237 (4) If a law enforcement agency of another state or GLIFWC makes a request  
7 meeting all the requirements specified for a request by a Wisconsin law enforcement agency  
8 or a federal law enforcement agency under sub. (3), the department shall comply with the  
9 request if all of the following apply:

10           (a) The law enforcement agency of the other state or GLIFWC agrees to comply with  
11 all of the requirements under this section.

12           (b) The other state or GLIFWC allows Wisconsin law enforcement agencies similar or  
13 greater access to similar information from that state or GLIFWC.

**NOTE:** SECTIONS 10 to 12 give GLIFWC the same access to drivers license and identification card photographs created and maintained by the DOT as current law gives to law enforcement agencies of other states. They also apply the provisions of current law that limit the uses of such photographs by law enforcement agencies and require that an agency keep a photograph obtained by this authority confidential and destroy the photograph when the agency no longer needs the photograph for the purpose for which it obtained the photograph.

14           **SECTION 13.** 939.22 (22) of the statutes is amended to read:

15           939.22 (22) “Peace officer” means any person vested by law with a duty to maintain  
16 public order or to make arrests for crime, whether that duty extends to all crimes or is limited  
17 to specific crimes. “Peace officer” includes a conservation warden employed by the great

1 lakes Indian fish and wildlife commission [, who meets the requirements of s. 165.85 (4) (b)  
2 1., (bn) 1., and (c) and has agreed to accept the duties of a law enforcement officer under the  
3 laws of this state].

**NOTE:** This definition applies to the criminal code, chs. 939 to 948 and 951, stats.

Inclusion of the bracketed language would limit the effect of this definition to GLIFWC wardens who are able to act under s. 175.41, created by the draft. Exclusion of that language would extend the effect to any warden employed by GLIFWC.

This definition change applies all of the following to GLIFWC wardens:

Protection of officers; interference with law enforcement:

Section 941.21, stats., disarming a peace officer.

Section 941.26 (2), stats., using explosives, etc., to harm a peace officer.

Section 941.26 (4) (d), stats., using pepper spray to harm a peace officer.

Section 941.37, stats., obstructing emergency or rescue personnel.

Section 941.375, stats., throwing bodily fluids at peace officers and others.

Section 946.40, stats., refusing to aid an officer.

Section 946.41, stats., resisting or obstructing an officer.

Section 946.415, stats., resisting arrest.

Section 946.42, stats., escape from custody of peace officer or others.

Section 946.70, stats., impersonating a peace officer.

Firearms, other weapons, and explosives:

Section 941.20 (3), stats., discharge of firearm from vehicle prohibited; exception for peace officers.

Sections 941.23, stats., carrying a concealed weapon prohibited; exception for peace officers.

Section 941.235, stats., carrying a firearm in public buildings prohibited; exception for peace officers.

Section 941.237, stats., carrying a handgun where alcohol is served prohibited; exception for peace officers.

Section 941.26 (4) (c), stats., use of pepper spray prohibited; exception for peace officers.

Section 941.29, stats., possession of firearm by certain individuals prohibited; exception for peace officers.

Section 941.295, stats., possession of an electric weapon prohibited; exception for peace officers.

Section 941.2965, stats., carrying of facsimile firearm in an alarming manner prohibited; exception for peace officers.

Section 941.298, stats., firearm silencers prohibited; exception for peace officers.

Section 941.31, stats., possession of explosives prohibited; exception for peace officers.

Section 943.06, stats., possession of fire bombs prohibited; exception for peace officers.

Section 948.55, stats., leaving a loaded firearm within reach of a child prohibited; exception for peace officer if access to weapon is incident to performance of the officer's duty.

Other duties or references:

Section 940.09, stats., report required regarding arrests for homicide by intoxicated use of a vehicle or firearm.

Section 940.291, stats., peace officer must provide first aid for person in custody.

Section 943.75, stats., unauthorized release of animals prohibited; exception for peace officers.

Other statutes that use the term "peace officer" as defined in this section:

Sections 23.29 (23) and 23.293 (13), stats., jurisdiction on state dedicated natural areas and ice age trail areas.

Sections 23.50 to 23.85, stats., forfeiture procedures for the enforcement of conservation laws.

Section 29.314, stats., shining animals; exceptions for peace officers.

Section 167.31, stats., safe use and transportation of firearms and bows; exceptions for peace officers.

Chapter 252, stats., communicable diseases.

Section 895.57, stats., liability for unauthorized release of animals; exception for peace officers.

Other references to “peace officer” as defined in this section that appear to have no applicability to the work of conservation wardens:

Section 36.11 (2), stats., police authority of the University of Wisconsin board of regents.

Section 95.21, stats., rabies control program.

Sections 943.49, 943.50, and 943.61, stats., recording in movie theaters, retail theft, and theft from a library; proprietor may hold suspect until peace officer arrives.

Section 945.05, stats., peace officer may seize vehicles associated with illegal gambling equipment.

Section 941.24 (2), stats., surrender of switchblades to a peace officer (deadline for surrender was 1959).

Section 941.295 (3), stats., surrender of electric weapons to a peace officer (deadline for surrender was 1982).

**NOTE:** The following statutes in chs. 939 to 948 and 951 apply to DNR wardens under current law but **would not** apply to GLIFWC wardens under this definition change because, in most instances, they use the term “law enforcement officer”, rather than “peace officer”, and in the instances that use “peace officer”, the term is limited to peace officers of the United States or subdivisions of the United States.

Section 940.20 (2), stats., battery to law enforcement officers and fire fighters.

Section 941.20 (1m) (b), stats., pointing a firearm at a law enforcement officer or others.

Sections 941.25 and 941.26, stats., manufacture of machine guns; possession limited; exceptions (found in s. 941.27, stats.) apply to peace officers of the United States or any political subdivision of the United States.

Section 941.28, stats., short-barrelled shotguns and rifles prohibited; exception applies to peace officers of the United States or any political subdivision of the United States.

Section 941.291 (6), stats., person in custody of law enforcement officer may wear body armor.

