

1 **AN ACT** *to amend* 48.028 (2) (b) and (c), 48.028 (2) (f), 48.028 (3) (f) and 48.38 (4)
2 (fg) 2.; and *to create* 48.02 (1c) and 48.028 (2) (i) of the statutes; **relating to:**
3 providing full faith and credit to a tribal court proceeding for a suspension of
4 parental rights or an adoption under tribal law or custom.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Special Committee on Permanency for Young Children in the Child Welfare System.

Background

In 2009, Wisconsin incorporated the Federal Indian Child Welfare Act (ICWA) in the Children’s Code and the Juvenile Justice Code.

In very general terms, ICWA applies to certain child custody proceedings in state courts involving an Indian child, and requires certain notices, findings, and placement preferences in state court child custody proceedings under certain circumstances. ICWA provides for tribal court jurisdiction in some circumstances and also provides a process for a tribe to assume exclusive jurisdiction of a state court’s child custody proceeding under certain circumstances.

ICWA accords full faith and credit by the state to a tribal court’s Indian child custody proceeding, just as the state would to a judicial proceeding of any other governmental entity.

An “Indian child custody proceeding” in a state court means an action for an adoptive placement, an out-of-home care placement, a preadoptive placement, or a termination of parental rights. It does not include a proceeding in a tribal court for a suspension, rather than termination, of parental rights, or an adoption under tribal law or custom.

Bill Draft

The draft provides definitions for an “adoption under tribal law or custom” and a “suspension of parental rights”, and provides that such actions by a tribal court are accorded full faith and credit by a state court.

5 **SECTION 1.** 48.02 (1c) of the statutes is created to read:

1 48.02 (1c) “Adoption under tribal law or custom” means an adoption recognized by an
2 Indian child’s tribe that gives a child a permanent parent–child relationship with an individual
3 other than a biological parent.

NOTE: This SECTION provides a definition for an “adoption under tribal
law or custom”.

4 **SECTION 2.** 48.028 (2) (b) and (c) of the statutes are amended to read:

5 48.028 (2) (b) “Former Indian custodian” means a person who was the Indian custodian
6 of an Indian child before termination or suspension of parental rights to and adoption of the
7 Indian child.

8 (c) “Former parent” means a person who was the parent of an Indian child before
9 termination or suspension of parental rights to and adoption of the Indian child.

NOTE: This SECTION modifies the definitions of “former Indian
custodian” and “former parent” in the Wisconsin Indian Child Welfare
Act (WICWA) to specify that a former parent or former Indian custodian
in a state court proceeding includes a person who had parental rights or
custodial responsibilities prior to a suspension of parental rights by a
tribal court.

10 **SECTION 3.** 48.028 (2) (f) of the statutes is amended to read:

11 48.028 (2) (f) “Preadoptive placement” means the temporary placement of an Indian
12 child in a foster home, group home, or residential care center for children and youth, in the
13 home of a relative other than a parent, or in the home of a guardian after a termination or
14 suspension of parental rights but prior to or in lieu of an adoptive placement.

NOTE: This SECTION specifies that a preadoptive placement in a state
court proceeding under WICWA includes placement after a suspension
of parental rights by a tribal court.

15 **SECTION 4.** 48.028 (2) (i) of the statutes is created to read:

1 48.028 (2) (i) “Suspension of parental rights” means a permanent suspension, pursuant
2 to a tribal court order, of all rights, powers, privileges, immunities, duties, and obligations
3 existing between parent and child.

NOTE: This SECTION provides a definition for a “suspension of parental
rights” ordered by a tribal court.

4 **SECTION 5.** 48.028 (3) (f) of the statutes is amended to read:

5 48.028 (3) (f) *Full faith and credit.* The state shall give full faith and credit to the public
6 acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian child
7 custody proceeding, including a proceeding for a suspension of parental rights or an adoption
8 under tribal law or custom, to the same extent that the state gives full faith and credit to the
9 public acts, records, and judicial proceedings of any other governmental entity.

NOTE: This SECTION specifies that a state court must accord full faith
and credit to a tribal court’s order for a suspension of parental rights or
an adoption under tribal law or custom.

10 **SECTION 6.** 48.38 (4) (fg) 2. of the statutes is amended to read:

11 48.38 (4) (fg) 2. Placement of the child for adoption, including placement for adoption
12 under tribal law or custom.

NOTE: This SECTION provides that, if a child’s permanency plan in a
state court’s Indian child custody proceeding includes the goal of
placement for adoption, that goal may include placement for adoption
under tribal law or custom.