

DM:ksm;

11/27/2012

1 **AN ACT** *to amend* 48.981 (3) (bm) of the statutes; **relating to:** requiring child
 2 protective service agencies to notify tribal agents of reports of suspected child abuse
 3 or child neglect.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Reporting of Child Abuse and Child Neglect.

Under current law, a county that has a federally recognized Indian reservation or a Bureau of Indian Affairs (BIA) service area for the Ho–Chunk nation wholly or partially within its boundaries must notify a tribal agent when it receives a report of suspected child abuse or child neglect and it knows or has reason to know the child is an Indian child or an Indian unborn child. If the county knows which Indian tribe the child is affiliated with or with which Indian tribe the unborn child may, when born, be eligible for affiliation, it must notify the tribal agent of that tribe. If the county does not know the tribal affiliation of the child or unborn child, it must notify the tribal agent serving the reservation or Ho–Chunk service area where the child or expectant mother resides. If the county does not know the child or unborn child’s tribal affiliation and the child or the unborn child’s expectant mother does not live on a reservation or in a Ho–Chunk service area, the county must notify any tribal agent serving a reservation or Ho–Chunk service area in the county. A county that does not have a federally recognized Indian reservation or BIA service area for the Ho–Chunk nation within its boundaries is not required, under current law, to notify a tribe that it received a report of suspected child abuse or child neglect pertaining to a child it knows or has reason to know is an Indian child or Indian unborn child.

This draft makes the following changes to the requirement that a county agency notify a tribal agent when it receives a report of suspected child abuse or child neglect pertaining to a child or unborn child the agency knows or has reason to know is an Indian child or is an Indian unborn child:

- Applies the notification requirement to child protective agencies in all counties of the state.
- Eliminates the requirement to notify a tribal agent when the county agency does not know the tribe with which the child is affiliated or the tribe with which the unborn child may, when born, be eligible for affiliation.
- Authorizes a county agency to provide a tribal agent with an address other than the child or expectant mother's residence where the child or expectant mother may be located.
- Eliminates a restriction on information that a county agency may provide to a tribal agent.
- Specifies that notice of a report of suspected child abuse or child neglect does not constitute notice for any other purpose.

1 **SECTION 1.** 48.981 (3) (bm) of the statutes is amended to read:

2 48.981 (3) (bm) *Notice of report to Indian tribal agent.* ~~In a county that has wholly or~~
3 ~~partially within its boundaries a federally recognized Indian reservation or a bureau of Indian~~
4 ~~affairs service area for the Ho-Chunk tribe, if a Δ county department or, in a county having~~
5 ~~a population of 500,000 or more, the department or a licensed child welfare agency under~~
6 ~~contract with the department~~ that receives a report under par. (a) pertaining to a child or unborn
7 child ~~the county department, department, or licensed child welfare agency under contract with~~
8 ~~the department~~ knows or has reason to know ~~that the child is an Indian child who resides in~~
9 ~~the county or that the unborn child or~~ is an Indian unborn child whose expectant mother resides
10 ~~in the county, the county department shall, if it knows with which Indian tribe the Indian child~~
11 ~~is affiliated or with which Indian tribe the Indian unborn child may, when born, be eligible for~~
12 ~~affiliation, provide notice, which~~ of the report to the tribal agent of that tribe. Notice shall
13 ~~consist only of the name and address of the Indian child or expectant mother, the address of~~
14 the Indian child or expectant mother or another address where the Indian child or expectant

1 mother may be located, and the fact that a report has been received about that Indian child or
2 Indian unborn child, and shall be made within 24 hours to one of the following:

3 ~~1. If the county department knows with which Indian tribe the child is affiliated, or with~~
4 ~~which Indian tribe the Indian unborn child, when born, may be eligible for affiliation, and the~~
5 ~~Indian tribe is a Wisconsin Indian tribe, the tribal agent of that tribe.~~

6 ~~2. If the county department does not know with which Indian tribe the child is affiliated,~~
7 ~~or with which Indian tribe the Indian unborn child, when born, may be eligible for affiliation,~~
8 ~~or the child or expectant mother is not affiliated with a Wisconsin Indian tribe, the tribal agent~~
9 ~~serving the reservation or Ho-Chunk service area where the child or expectant mother resides.~~

10 ~~3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk~~
11 ~~service area in the county. This paragraph does not constitute notice under section 48.028 (4)~~
12 ~~(a), 25 USC 1912 (a), or any other law.~~

NOTE: Applies tribal notification requirement to child protective service agencies in all counties. Eliminates the requirement that a county agency must provide notice if it does not know which tribe the child is affiliated with. Authorizes county agencies to provide tribal agents with an address other than the child or expectant mother's residence where the child or expectant mother may be located. Eliminates the restriction that notice is limited to the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child. Specifies that notice to a tribe of a report of suspected child abuse or child neglect does not satisfy the notice obligations of any other law, including the Wisconsin Indian Child Welfare Act.

COMMENT: Generally, the modifications in the draft are based on language the Department of Children and Families (DCF) supplied committee staff and reflects suggestions developed within DCF's policy and law working group. The committee may wish to consider the following questions with respect to these modifications:

1. Under current law, a county agency that does not know the child's tribal affiliation must notify either the tribal agent serving the reservation or service area where the child or the child's expectant mother resides or any tribal agent serving a reservation or service area in the county.

However, because the draft applies the notification requirement to all counties, the existing framework for providing notice in the event a county agency does not know the child's tribal affiliation could not be applied uniformly throughout the state because not every county contains a federally recognized Indian reservation or BIA service area for the Ho-Chunk nation. Accordingly, the draft requires notification only when the county knows with which tribe the Indian child is affiliated or with which tribe the Indian unborn child may, when born, be eligible for affiliation. Does the committee wish to eliminate the requirement to give notice in the event a county does not know a child or unborn child's tribal affiliation?

2. The draft authorizes a county agency to provide a tribal agent with any address where the tribe could locate a child or expectant mother. Would the committee like to expand the addresses a county could provide a tribe?

3. Does the committee wish to authorize county agencies to provide tribes with information other than the child or expectant mother's name and address and the fact that a report has been received?

4. The draft specifies that the tribal notification provision in the child abuse reporting law does not constitute notice for any other purpose. This modification does not make any substantive changes, but it may provide some clarity with respect to agencies' obligations to provide notice to tribes. Would the committee like to insert this language?