

AMENDMENT TO WLC: 0005/2

1 At the locations indicated, amend the draft as follows:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Special Committee on State–Tribal Relations. At its September 25, 2012 meeting, the special committee voted to recommend WLC: 0005/2, relating to the intoxicated driver program (IDP), to the Joint Legislative Council for introduction in the 2013 Legislature. This draft amends WLC: 0005/2 (referred to hereafter as “the draft bill”).

The IDP is designed to provide education or treatment to persons convicted of operating a motor vehicle while intoxicated (OWI), with the intent of reducing recidivism. In brief, upon conviction, the court orders the offender to be assessed by an agency operated or contracted by the county for this purpose (termed “approved public treatment facility”). Based on the results of the assessment, the offender is referred either to an educational program or to an approved public treatment facility.

The draft bill, among other things, allows an OWI offender who is a tribal member or a relative of a tribal member to obtain the required assessment from a mental health treatment facility of an American Indian tribe or band.

Following the special committee’s vote on the draft bill, discussions among the committee staff, state agency staff, and staff of county and tribal treatment facilities identified a deficiency in the draft bill. Under current law, when a circuit court convicts a person of OWI, it issues an order that the offender appear for assessment at the treatment facility of the county of that court. The court sends a copy of the order to the county facility and to the department of transportation (DOT). If the offender appears as required, the county facility conducts the assessment, prepares a driver safety plan, and sees the offender through the plan, reporting to the DOT when the offender has completed the plan. If the offender does not appear, the agency reports the offender to the DOT as not in compliance with the court order.

The deficiency identified in the draft bill is that it does not provide a mechanism for notifying the county facility when an American Indian elects to report to a tribal facility, rather than the county facility identified in the court order. If an offender reports to a tribal facility without notifying the county facility, the county facility will report the

offender as not in compliance with the court order, while the person actually is in compliance.

This draft amendment directs the department of health services to authorize an approved tribal treatment facility to conduct assessments of OWI offenders if the facility agrees, with regard to each offender who reports to it for assessment, to report to the county facility and to the DOT that the offender has reported to it and to execute all responsibilities of a county facility under the IDP.

1 **1.** Page 3, line 3: before that line insert:

2 “**SECTION 2m.** 51.45 (7) (h) of the statutes is created to read:

3 51.45 (7) (h) The department shall authorize an approved tribal treatment facility to
4 conduct assessments under s. 343.30 (1q) (c) and prepare driver safety plans under s. 343.30
5 (1q) (d) if [the approved tribal treatment facility agrees in writing to] [the governing body of
6 the American Indian tribe or band that operates the approved tribal treatment facility adopts
7 a resolution stating that the approved tribal treatment facility will], with regard to each person
8 for whom the approved tribal treatment facility conducts an assessment under s. 343.30 (1q)
9 (c), do all of the following:

10 1. Notify the department of transportation and the county assessment agency identified
11 in the order under s. 343.30 (1q) (c) 1. that the approved tribal treatment facility has conducted
12 the assessment.

13 2. Execute all duties of an approved public treatment facility under s. 343.30 (1q) and
14 rules promulgated under s. 343.30 (1q).”.

COMMENT: At what level should the agreement to report and execute the duties of a county facility be made, at the level of the facility or the governing body of the tribe or band?

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(END)