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01/27/2015

1 **AN ACT** *to renumber* 48.195 (6); *to amend* 48.195 (3) (title), 48.195 (3) (a) and
2 48.195 (3) (b); and *to create* 48.195 (2) (d) 8., 48.195 (2) (e), 48.195 (3) (a) 2. to 7.,
3 48.195 (3) (am), 48.195 (4m) and 48.195 (6) (b) of the statutes; **relating to:** the
4 collection and sharing of information regarding an American Indian child
5 relinquished under the safe haven law and restoration of parental custody to an
6 Indian child less than 11 days of age.

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 Special Committee on State–Tribal Relations, at the direction of Representative Jeff Mursau, chair of the special committee. It is based on ideas presented in Memos No. 14–2 and 14–4 to the special committee and on various discussions among committee members and other interested persons.

Under the so–called safe haven law, a parent of a child under the age of 72 hours may anonymously relinquish the child to the state. Relinquishment is made to hospital personnel, a police officer, or an emergency medical technician. The person that takes custody of the child delivers the child to the county, which commences proceedings to provide for the child’s care. The parent is immune from criminal liability for any act or omission related to the relinquishment.

To protect the anonymity of the parent, no one may pursue or attempt to find information about a parent who has relinquished a child under the safe haven law. The two exceptions to this are in a case where there is reasonable cause to believe: (1) that the child has been the victim of abuse or neglect; or (2) that the parent was coerced to relinquish the child. In addition, with certain exceptions, a person who obtains any information relating to the relinquishment of a child is required to keep that information confidential.

Also under current law, a proceeding related to the termination of parental rights to an Indian child or to the out–of–home placement of an Indian child is subject to the federal Indian Child Welfare Act (ICWA)

and the Wisconsin Indian Child Welfare Act (WICWA). “Indian child” is defined as an unmarried person under the age of 18 years who is a member of an Indian tribe or is both eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. Among other provisions, these laws give the tribe primary jurisdiction in such cases and establish standards and procedural requirements for such cases.

This draft was prepared in response to the observation that the safe haven law frustrates the functioning of ICWA and WICWA: because a safe haven relinquishment is anonymous, a tribal court may have jurisdiction over placement of a child affiliated to that tribe but not know this and so not be able to exercise that jurisdiction. The draft makes the following changes to the safe haven law to allow a tribe to find out when an Indian child affiliated with that tribe has been relinquished to the state:

1. Requires a person who takes custody of a relinquished child to make a reasonable effort to do all of the following:
 - a. Provide the relinquishing parent with certain information relating to the relinquishment.
 - b. Solicit certain information from the parent regarding the child’s social and health history and any tribal affiliation of the child.
 - c. If the parent declines to provide the information solicited, encourage the parent to submit the information to the county at a later date.
2. Authorizes a person who has information regarding the identity of a parent who has relinquished a child to release that information to an agency or personnel of a federally recognized American Indian tribe or band with responsibility for child welfare matters, if the person has reason to believe that the child is affiliated with that tribe.
3. Requires a person who obtains information relating to the tribal affiliation of a relinquished child to promptly transmit the information to the county department in the county where the child was relinquished, and requires a county department that obtains information relating to the tribal affiliation of a relinquished child to promptly transmit the information to the agency or personnel of the tribe with responsibility for child welfare matters.
4. Directs the Department of Children and Families to prepare the written materials described in 1. a., above.

ICWA and WICWA specify that parental consent to the termination of parental rights to an Indian child is not valid if given before the child has reached the age of 11 days. Some argue that the ability of a parent to relinquish a child less than three days old under the safe haven law conflicts with this provision of ICWA and WICWA. Others note that the cited provision of ICWA and WICWA applies to voluntary terminations of parental rights; a proceeding to determine the disposition of a child relinquished under the safe haven law is conducted as an involuntary termination of parental rights, not subject to the cited provision. In response to an interest to give partial effect to the cited provision, although not addressing that provision directly, this draft directs the county department to restore custody to the parent of an Indian child less than 11 days old who was relinquished under the safe haven law.

1 **SECTION 1.** 48.195 (2) (d) 8. of the statutes is created to read:

2 48.195 (2) (d) 8. The agency or personnel of a federally recognized American Indian
3 tribe or band with responsibility for child welfare matters, if the person has reason to believe
4 that the child is a member of the Indian tribe or is both eligible for membership in the Indian
5 tribe and the biological child of a member of the Indian tribe.

NOTE: This provision allows a person to share information regarding an Indian child relinquished under the safe haven law with the appropriate tribal child welfare agency or personnel.

6 **SECTION 2.** 48.195 (2) (e) of the statutes is created to read:

7 48.195 (2) (e) Notwithstanding par. (d), a person who obtains information relating to
8 the tribal affiliation of a child relinquished under sub. (1) shall promptly transmit the
9 information to the county department in the county where the child was relinquished. A
10 county department that obtains information relating to the tribal affiliation of a child
11 relinquished under sub. (1) shall promptly transmit the information to the agency or personnel
12 of the tribe with responsibility for child welfare matters.

13 **SECTION 3.** 48.195 (3) (title) of the statutes is amended to read:

14 48.195 (3) (title) INFORMATION FOR PARENT; INFORMATION REGARDING CHILD.

15 **SECTION 4.** 48.195 (3) (a) of the statutes is amended to read:

1 48.195 (3) (a) Subject to par. (b), a law enforcement officer, emergency medical
2 technician, or hospital staff member who takes a child into custody under sub. (1) shall make
3 available to the parent who relinquishes custody of the child ~~the~~ a packet of information that
4 includes all of the following:

5 1. The maternal and child health toll-free telephone number maintained by the
6 department under 42 USC 705 (a) (5) (E).

7 **SECTION 5.** 48.195 (3) (a) 2. to 7. of the statutes are created to read:

8 48.195 (3) (a) 2. A statement that:

9 a. The parent has a right to remain anonymous.

10 b. The provision of any identifying information is voluntary on the part of the parent
11 and the choice to not provide that information will not affect the parent's ability to relinquish
12 the child.

13 c. Any identifying information provided by the parent will be treated as confidential.

14 3. An explanation of the importance to the future well-being of a child of information
15 regarding the child's social and health history.

16 4. An explanation of the importance to an American Indian child of a social and cultural
17 connection to the child's tribe and clan and the potential benefits of tribal enrollment.

18 5. A form to provide information regarding the social and health history of the child and
19 of each parent of the child.

20 6. A form to provide information regarding any tribal affiliation of the child, including
21 the identity, tribal affiliation, and birth dates of the child's parents and grandparents.

22 7. A postage-paid envelope addressed to the county department of the county in which
23 the relinquishment occurs and instructions to use the envelope to return the completed forms.

24 **SECTION 6.** 48.195 (3) (am) of the statutes is created to read:

1 48.195 (3) (am) Subject to par (b), a law enforcement officer, emergency medical
2 technician, or hospital staff member who takes a child into custody under sub. (1) shall, at the
3 time of taking custody of the child, make a reasonable effort to do all of the following:

4 1. Review the information provided under par. (a) with the parent who relinquishes
5 custody of the child, including an explanation of the information under par. (a) 3. and 4. At
6 a minimum, the law enforcement officer, emergency medical technician, or hospital staff
7 member shall ask the parent if the child is an Indian child.

8 2. Assist the parent to complete the forms described in par. (a) 5. and 6. and return the
9 completed forms to the county department of the county in which the relinquishment occurs.

10 3. If the parent declines to review the materials under subd. 1. or to complete the forms
11 under subd. 2., encourage the parent to take the materials, to review them at a later time, and
12 to return the completed forms in the return envelope.

13 **SECTION 7.** 48.195 (3) (b) of the statutes is amended to read:

14 48.195 (3) (b) ~~The decision~~ decisions whether to accept the information made available
15 under par. (a) is , to engage in the discussion under par. (am) 1., and to provide the information
16 under par. (am) 2. or 3. are entirely voluntary on the part of the parent. No person may ~~induce~~
17 ~~or coerce or attempt to induce or coerce~~ or, except as provided in par. (am), induce or attempt
18 to induce any parent into accepting ~~that information~~ the information made available under par.
19 (a), engaging in the discussion under par. (am) 1., or providing the information under par. (am)
20 2. or 3.

21 **SECTION 8.** 48.195 (4m) of the statutes is created to read:

22 48.195 (4m) RESTORATION OF PARENTAL CUSTODY TO AN AMERICAN INDIAN CHILD LESS
23 THAN 11 DAYS OF AGE. A county department shall restore custody of a child relinquished under

1 sub. (1) without conditions or further proceedings to a person who provides evidence to the
2 county department's satisfaction that all of the following apply:

3 (a) The person is the child's biological parent.

4 (b) The child is an Indian child.

5 (c) The child has not attained the age of 11 days.

6 **SECTION 9.** 48.195 (6) of the statutes is renumbered 48.195 (6) (a).

7 **SECTION 10.** 48.195 (6) (b) of the statutes is created to read:

8 48.195 (6) (b) The department shall develop written materials for inclusion in the
9 information packets under sub. (3) (a). The department shall consult with the federally
10 recognized American Indian tribes and bands in this state in developing the materials
11 described in sub. (3) (a) 4. and the form described in sub. (3) (a) 6. To the extent practicable,
12 the form described in sub. (3) (a) 6. shall allow for the identification of individuals by tribally
13 issued identification numbers or other means that do not reveal the individual's name.

14 (END)