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## WISCONSIN LEGISLATIVE COUNCIL

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### MEETING MINUTES

#### SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

Room 411 South  
State Capitol  
Madison, WI

November 15, 2018  
10:00 a.m. – 1:02 p.m.

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#### Call to Order and Roll Call

Chair Mursau called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Jeffrey Mursau, Chair; Sen. Kathleen Vinehout, Vice Chair; Rep. James Edming; Sens. Janet Bewley, Tim Carpenter, Jerry Petrowski, and Lena Taylor (via phone); and Public Members Wilfrid Cleveland, Michael Decorah, Shannon Holsey, and Jason Weaver.

COMMITTEE MEMBERS EXCUSED: Rep. Dave Considine; and Public Members Dee Ann Allen, Gary Besaw, Ned Daniels, Jr., Chris McGeshick, Richard Peterson, and Lisa Summers.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Michele Allness, Department of Natural Resources; Stephanie Lozano, Department of Children and Families; Gail Nahwahquaw, Department of Health Services (DHS); and Thomas Ourada, Department of Revenue.

TECHNICAL ADVISORY COMMITTEE MEMBERS EXCUSED: Tom Bellavia, Department of Justice; Andrew Evenson, Department of Workforce Development; Kelly Jackson, Department of Transportation; and David O'Connor, Department of Public Instruction (DPI).

COUNCIL STAFF PRESENT: David Moore, Senior Staff Attorney, and Rachel Snyder and Ethan Lauer, Staff Attorneys.

APPEARANCES: Kenya Bright, Section Chief, Integrated Services Section, Bureau of Prevention, Treatment, and Recovery, Division of Care and Treatment Services, DHS; Tammy Bergum, Lac Courtes Oreilles (LCO) Behavioral Health Director and Comprehensive Community Services (CCS) Administrator; and Brian Jackson, Rachel Byington, Doreen Wawronowicz, and Brandon Thoms, President and Board Members, respectively, of the Wisconsin Indian Education Association.

### **Approval of the Minutes of the October 10, 2018 Meeting**

*Senator Carpenter moved, seconded by Senator Bewley, to approve the minutes of the October 10, 2018 meeting. The motion was unanimously approved by voice vote.*

### **Presentation Regarding Civil Commitment Under Ch. 51, Stats.**

#### **Kenya Bright, Section Chief, Integrated Services Section, Bureau of Prevention, Treatment, and Recovery, Division of Care and Treatment Services, DHS**

Ms. Bright presented the committee with an overview of the process for civil commitments governed by ch. 51, Stats. Although other forms of commitment exist, Ms. Bright focused on involuntary commitments. Under current law, an individual who is mentally ill, drug dependent, or developmentally disabled may be detained by a law enforcement officer if that officer believes that one of the following is true: (1) there is a substantial probability that the individual will physically harm himself or herself; (2) there is a substantial probability that the individual will physically harm another; (3) the individual's impaired judgment will result in physical harm to the individual or another; or (4) the individual is unable to satisfy his or her basic needs.

If a law enforcement officer is satisfied that sufficient criteria exist, the individual may be taken into custody. The county is notified and must agree to this initial detention, which may last no longer than 72 hours. During the initial detention, the individual will be afforded a probable cause hearing so that a court can decide whether the detention was justified. If the court finds probable cause, the individual will continue to be detained and a final hearing will be held within 14 days. During this second stage of detention, the individual will receive two mental health assessments. At the final hearing, the court can either release the individual or order the individual committed to the care of the county.

At every stage a detained person must be afforded the least restrictive setting that is capable of providing the requisite services. As an example, a psychiatric hospital may be less restrictive than a state mental health institution.

Ms. Bright emphasized that the most important element of the civil commitment process for purposes of the special committee was that the statute vests the county with key decision-making authority throughout the process.

Tammy Bergum, LCO Behavioral Health Director and CCS Administrator

Ms. Bergum focused on the challenges her tribe has had dealing with county personnel during the civil commitment process. She stressed that even when a tribal law enforcement officer believes that the criteria under current law are met, the county retains control over whether the individual may be detained. As a complicating factor, the county in question contracts with a mental health counseling firm to help make decisions on detention. Ms. Bergum stated that the tribal CCS could better serve that role with regard to detention of tribal members because its counselors are more likely to have an established relationship with potential detainees.

Ms. Bright and Ms. Bergum responded to a variety of questions from committee members. They clarified that a county funds the civil commitment process, including transportation for mental health evaluations, out of its levy and is not allowed to exceed the levy limit for civil commitment purposes. They also noted, however, that a committed individual's health insurance, whether it be private, Medicare, or Medicaid, can be billed for certain mental health services. The panelists and committee members opined that county contracts with tribal Federally Qualified Health Centers to provide services could resolve some of the identified issues, and directed committee staff to work with stakeholders to identify how best to give that idea effect.

**Postponement of Discussion of Bill Draft**

LRB-0388/P4, relating to battery or threat to an officer of the court in a tribal proceeding and providing a penalty

Chair Mursau deferred action on LRB-0388/P4 so that additional committee members could participate at the next meeting. A previous version of the draft was discussed at the October 10, 2018 meeting.

**Presentation on American Indian Studies, Including Requirements  
Related to 1989 Wisconsin Act 31**

Brian Jackson, President, and Rachel Byington, Doreen Wawronowicz, and Brandon Thoms,  
Board Members, Wisconsin Indian Education Association

Mr. Jackson and his panel presented the views of the Wisconsin Indian Education Association, Inc., regarding its efforts to further the goals of Act 31. The panel identified two main areas where it would like to see improvement. First, the panel thought that more consequences or enforcement ought to be added to the law to encourage more schools to fully comply with the requirements of Act 31. Second, the panel felt that teachers generally want to comply with the law and incorporate American Indian studies into their classrooms but are unsure of where to find authentic and vetted instructional materials. The panel believes that this uncertainty on the part of teachers leads them to avoid complying with Act 31 altogether, and suggested that DPI could add more resources to its website and promote more broadly the website's availability to teachers.

The panel also mentioned that it would like to see instruction in American Indian studies that focuses on a tribe or band local to the school in question, would like school districts to hire

more American Indian teachers, and would like any draft bill developed by the committee on Act 31 to contain as many specifics as possible.

### **Discussion of Committee Assignment and Bill Drafts**

#### **LC Study Committee Memorandum, "Current Incorporation of American Indian Studies in Wisconsin's Model Academic Standards" (November 8, 2018) and LRB-0468/P1, relating to model academic standards for American Indian studies**

Committee staff gave an overview of the memorandum that the committee had asked for at its last meeting. Attached to the memorandum was a document prepared by DPI showing where tribes and bands are mentioned in the existing model academic standards. Committee staff also explained that the draft bill directed the department to develop a separate model academic standard for American Indian studies in Wisconsin. The committee did not request any changes to the bill draft.

#### **LRB-0469/P2, relating to required instruction in American Indian studies in the elementary and high school grades**

Committee staff explained that this draft increases from two times to three times the frequency of American Indian studies instruction in the elementary grades, and increases from once to annually the frequency of such instruction in the high school grades. The committee asked for an alternative draft that would specify grade bands in the elementary grades during which the instruction occurs (such as "once each in grades K-2, 3-5, and 6-8"), and that would begin the instruction in pre-kindergarten. The committee requested each change with the intent to expose school children to the instruction at younger ages.

#### **LRB-0470/P2, relating to materials related to a school board's obligations to provide instruction on American Indians**

Committee staff explained that this draft has two parts. First, it directs DPI to develop orientation materials to inform school board members, school district administrators, and principals about a school board's responsibilities under Act 31. Second, it requires a school board to distribute these materials to principals, administrators, and school board members, and specifies that the materials be given to a school board member within 30 days of taking office. Committee staff sought guidance from the committee on the following two questions.

First, does the committee want the draft to impose a deadline or frequency for distribution of the materials to administrators and principals? The committee agreed that a school board should ensure that a school district administrator or principal receives the materials within 30 days of beginning to work in such a position. It also agreed that the materials did not need to be redistributed each school year unless there was a change in personnel or a change in the underlying law regarding a school board's responsibilities relating to American Indian instruction.

Second, does the committee want the draft to impose a deadline for DPI to develop the orientation materials? The committee was unsure whether DPI had ready access to such materials or would have to create them anew. The committee asked committee staff to check with DPI for its opinion on a reasonable deadline.

*LRB-0471/P2, relating to the American Indian studies requirement for teacher licensure*

Committee staff explained that this draft modernizes the description of the instruction that a teaching candidate must receive before being granted a license. The new language maintains the requirement that a candidate receive instruction in the culture and tribal sovereignty of Wisconsin's tribes and bands, and adds a requirement that the instruction include "contemporary and historical significant events" for those tribes and bands. The committee did not request any changes to the draft.

*LRB-0472/P2, relating to requiring private schools participating in a parental choice program and independent charter schools to provide instruction in American Indian history, culture, and tribal sovereignty*

Committee staff explained that this draft applied current law on American Indian studies under Act 31 to parental choice schools and independent charter schools, and that if the committee adopted changes to Act 31 in other areas, this draft could be revised accordingly. The committee did not request any further changes to the draft.

**Plans for Future Meetings**

Chair Mursau noted that the committee's next meeting date will be December 13, 2018.

**Adjournment**

The meeting adjourned at 1:02 p.m.

DM:RES:EL:jal

[The preceding is a summary of the November 15, 2018 meeting of the Special Committee on State-Tribal Relations, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]