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# Wisconsin Legislative Council

## STUDY COMMITTEE MEMO

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**Memo No. 1**

**TO:** MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

**FROM:** Steve McCarthy, Senior Staff Attorney

**RE:** Topics for Committee Discussion

**DATE:** October 12, 2020

This memo provides a list of potential topics of discussion for the October 19, 2020 meeting of the Special Committee on State-Tribal Relations. Specifically, the list includes four bill drafts prepared by Chair Jeffrey Mursau.<sup>1</sup> Very briefly, the bill drafts address battery or threats to an officer of the court in a tribal proceeding, membership of the Higher Educational Aids Board, composition of a temporary committee identifying residential options for a sexually violent person being placed on supervised release, and state licenses that authorize an individual to teach an American Indian language.

Where important for context, the memo provides background information and identifies issues that the committee may wish to take into consideration. However, the discussion of the bill drafts and issues that the bill drafts may raise is not exhaustive; rather, it is intended to prompt discussion to determine where there is committee consensus and if the committee would like to request modifications or additional information on any or all of the bill drafts.

## **LRB-0213/P1, RELATING TO BATTERY OR THREAT TO AN OFFICER OF THE COURT IN A TRIBAL PROCEEDING AND PROVIDING A PENALTY**

### **Background**

LRB-0213/P1 is identical to 2019 Assembly Bill 104, which was recommended by the special committee last session. The bill passed the Assembly and was recommended for approval by the Senate Committee on Insurance, Financial Services, Government Oversight and Courts, but was not acted upon by the Senate.

Under current law, s. 940.203, Stats., it is a Class H felony<sup>2</sup> to intentionally cause bodily harm or threaten to cause bodily harm to certain legal professionals if the harm or threat of harm is in response to an action taken by the legal professional in his or her official capacity in a proceeding under chs. 48, 51, 54, 55, 767, 813, or 938, Stats. The legal professionals addressed by this law are a current or former guardian ad litem, corporation counsel, or attorney, or a family member of such a person.

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<sup>1</sup> Copies of the bill drafts are included as an attachment to this memo.

<sup>2</sup> A Class H felony is punishable by a fine of up to \$10,000, imprisonment up to six years, or both. [s. 939.50 (3) (h), Stats.]

## **Bill Draft**

The bill draft modifies s. 940.203, Stats., in two respects. First, it expands the set of proceedings that may trigger the penalties to include any tribal court proceeding that is similar to a state court proceeding under one of the seven specified chapters. Second, it adds an “advocate” to the list of covered legal professionals. As defined by the bill draft, an “advocate” is an individual who represents the interests of a child, the tribe, or another party in a tribal court proceeding.

Thus, under the bill draft, a person who intentionally causes or threatens to cause bodily harm to the person or a family member of an advocate, as defined by the bill draft, is guilty of a Class H felony if: (1) the person causing or threatening to cause the harm knows or should have known the person is an advocate or a member of the advocate’s family; and (2) the act or threat is in response to an action taken by the advocate in his or her official capacity in a tribal court proceeding similar to the state court proceedings described above.

## **Consideration**

- Should the special committee renew its recommendation of LRB-0213/P1?

## **LRB-0216/P1, RELATING TO THE MEMBERSHIP OF THE HIGHER EDUCATIONAL AIDS BOARD**

### **Background**

LRB-0216/P1 is identical to 2019 Senate Bill 905, which was introduced by Special Committee Vice-Chair Bewley on March 26, 2020. The Legislature took no action on that bill.

The Higher Educational Aids Board (Board) is a part-time independent policy-making board that, among other responsibilities, administers a number of state student aid programs. Under current law, the Board consists of 11 voting members that represent certain interests, including public institutions of higher education, private nonprofit institutions of higher education, and the general public. The Board, however, does not include voting members that represent the interests of the state’s tribal colleges.

### **Bill Draft**

LRB-0216/P1 adds the following three members to the Board to represent the state’s tribal colleges:

- One member of a tribal college’s governing body;
- One tribal college financial aid administrator; and
- One tribal college student.

### **Consideration**

- Do the proposed additions to the Board capture the special committee’s desired representation of the state’s tribal colleges on the Board?

## **LRB-0227/P1, RELATING TO COMPOSITION OF TEMPORARY COMMITTEE IDENTIFYING RESIDENTIAL OPTIONS FOR A SEXUALLY VIOLENT PERSON PLACED ON SUPERVISED RELEASE**

### **Background**

Under current law, a person who has been found to be a sexually violent person may be involuntarily committed to the Department of Health Services (DHS) for control, care, and treatment. If a person is committed and placed in institutional care, the person may periodically petition the court for supervised release to the community. If a court approves the petition, the court must order the person's county of residence to prepare a report that identifies one appropriate residence for the person.

Current law requires the county to create a temporary committee to prepare the report. The temporary committee consists of a representative from the county department of community programs, a representative from DHS, a local probation or parole officer, the county corporation counsel, and a land use planning official.

### **Bill Draft**

LRB-0227/P1 adds to the membership of the temporary committee a representative of each federally recognized Indian tribe or band located in that county.

### **Consideration**

- Are there other circumstances under which a tribal representative should serve on a county temporary committee identifying residential options for a sexually violent person placed on supervised release?

## **LRB-0025/P2, RELATING TO A LICENSE THAT AUTHORIZES AN INDIVIDUAL TO TEACH AN AMERICAN INDIAN LANGUAGE PROGRAM AND MODIFYING RULES PROMULGATED BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

### **Background**

Under current law, an individual who holds any provisional teaching license is eligible for a lifetime license upon successfully completing six semesters of teaching experience. One such provisional teaching license is for a teacher participating in American Indian language programs.

Current law also requires the Department of Public Instruction (DPI) to establish standards certifying the abilities of these teachers. Those standards require, among other things, that the applicant for the license must be certified as competent in the American Indian language by the applicable tribal council, tribal language division, or local American Indian parent advisory committee.

## **Bill Draft**

LRB-0025/P2 allows DPI to issue lifetime licenses to teach an American Indian language in an American Indian language program only if the federally recognized American Indian tribe or band associated with the American Indian language authorizes lifetime licenses in that language.

Additionally, under the bill draft, if the federally recognized American Indian tribe or band associated with an American Indian language does not authorize lifetime licenses for that language, it must determine whether or not recertification is required to renew a license in that language, and if so, how often recertification must occur. The tribe's tribal council, tribal language division, or local American Indian parent advisory committee then completes the recertification. Also note that the bill draft provides that the designated recertification period may not be longer than five years.

## **Considerations**

- Should tribes have flexibility in determining whether mandatory lifetime teaching licenses for American Indian language are appropriate?
- Does the bill draft provide the right measure of flexibility for each tribe to determine its own course on this topic?

SM:jal

Attachments