



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2003 Wisconsin Act 284 [2003 Assembly Bill 402]	Delinquency Proceedings Involving American Indian Juveniles
2003 Acts: www.legis.state.wi.us/2003/data/acts/	Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm

2003 Wisconsin Act 284 relates to proceedings involving an American Indian juvenile who allegedly commits a delinquent act and, at the time of the alleged delinquent act, was both: (a) under a tribal court order (other than an order relating to adoption, physical placement or visitation with the juvenile's parent, or permanent guardianship); and (b) physically outside the boundaries of the reservation of a federally recognized American Indian tribe or band (tribe) in this state and any off-reservation trust land of either a tribe or a member of that tribe because of the tribal court order.

This legislation was recommended by the Joint Legislative Council's Special Committee on State-Tribal Relations. Additional background information is included in Legislative Council Report to the Legislature, *Special Committee on State-Tribal Relations*, RL 2003-08 (June 18, 2003).

In very general terms, the Act provides that, if the circumstances described above exist, state officials must consult with tribal officials to determine whether the best interests of the juvenile and of the public would be served by having the matter proceed in tribal court or state court. In addition, if a petition relating to the same delinquent act has been filed in tribal court when these circumstances exist, the Act prohibits venue for a delinquency proceeding (or a juvenile in need of protection or services (JIPS) delinquency proceeding) from being in the county where the American Indian juvenile resides unless it is also either the county where the juvenile is present or the county where the violation occurred. Thus, in such a case, venue would lie only in the county where the juvenile is present or the county where the violation occurred.

The Act's provisions include the following:

Duties of Juvenile Court Intake Worker

If the juvenile court intake worker determines that the specified circumstances exist, the intake worker must promptly notify the clerk of the tribal court, a person who serves as the tribal juvenile

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

intake worker, or a tribal prosecuting attorney that the juvenile allegedly committed a delinquent act under these circumstances. If a tribal official notifies the intake worker that a petition has been or may be filed in tribal court, the intake worker must consult with tribal officials. After the consultation, the intake worker must determine whether the best interests of the juvenile and of the public would be served by having the matter proceed solely in tribal court. If so, the intake worker must close the case. However, if the intake worker determines otherwise, the intake worker proceeds to handle the case as under current law.

Duties of District Attorney or Corporation Counsel

If the intake worker does not close the case or does so but the district attorney (or corporation counsel in certain counties for JIPS delinquency proceedings) disagrees with that decision, the district attorney may file a delinquency petition. The Act requires that, before filing such a petition, the district attorney must determine if the intake worker had received notice from a tribal official that a petition has been or may be filed in tribal court. If this notice was received or if the tribe notifies the district attorney directly, the district attorney must attempt to consult with appropriate tribal officials before filing the delinquency petition. If a petition is ultimately filed, the Act requires that the petition include a statement that the specified circumstances exist. If a tribal official has informed the intake worker or district attorney that a petition has been or may be filed in tribal court, the petition must include a statement to that effect.

Juvenile Court Procedure

If a juvenile court is informed that a petition relating to the same delinquent act has been or may be filed in tribal court, the juvenile court must suspend the proceeding and communicate with the tribal court to discuss whether the tribal court or juvenile court may be the more appropriate forum. If the courts agree that the tribal court would be the more appropriate forum, the juvenile court must either dismiss the delinquency petition without prejudice or suspend the proceeding. The juvenile court's decision must be based on the best interests of the juvenile and of the public.

Effective Date: May 1, 2004. The act applies to delinquent acts committed on or after May 1, 2004.

Prepared by: Joyce L. Kiel, Senior Staff Attorney

April 21, 2004

JLK:jal:tlu:rv