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Assembly Committee on Family Law
Public Hearing
10:00 AM – 415 Northwest

Chairwoman Larson and Members of the Committee:

I want to thank you for holding this hearing today on this common sense legislation to amend Wisconsin's statutes regarding Safe Haven laws. At the request of Safe Place for Newborns I am introducing AB 405/SB 326 to modify the existing Safe Haven law which was passed with bipartisan support in 2001.

The Safe Haven law allows a parent to relinquish a newborn child to any hospital employee, police office, firefighter or emergency medical technician within 72 hours of the birth of that child. This law attempts to prevent gruesome situations in which an infant is abandoned or simply "thrown away". Since the passage of this law over 125 infants have been saved and placed with adoptive families according to the Department of Children and Families most recent data from 2011.

AB 405/SB 326 is strengthening an already important law. This legislation allows a parent to relinquish custody of a newborn child for up to 30 days since the birth of the child. Additionally, this bill permits a health care clinic staff member to take a child into custody.

Professionals have recommended a change in order to recognize the fact that mothers may still be in the hospital after three days if there are complications. In addition, the most stressful time as a new parent is not the first three days, but is the first three to four weeks. It is an extremely small portion of our population that would consider having their new born child. Unfortunately, on occasion, desperate and sick people will consider having their child. This legislation will extend an additional alternative to having the child with no questions asked. Thank you again for taking the time to discuss AB 405/ SB 326, I am open to any questions the committee may have.

Thank you,


Dale P. Kooyenga

Safe Haven Laws within the Midwest

- Current Wisconsin Law
 - o You can leave your baby, **up to 3 days old**, with an employee at any hospital, fire station, sheriff's office, police station, emergency medical services provider or any other law enforcement agency in Wisconsin.
 - o http://www.nationalsafehavenalliance.org/states/wisconsin/Wisconsin_Safe_Haven_Law.pdf
 - o WI News Story - 2 Teens abandon their child, face charges
 - <http://www.fox11online.com/dpp/news/crime/teen-parents-charged-in-baby-abandonment->
- Current Minnesota Law
 - o You can leave your baby or another baby with the approval of the mother, **up to 3 days old**, with a hospital employee at any licensed hospital in Minnesota.
 - o http://www.nationalsafehavenalliance.org/states/minnesota/Minnesota_Safe_Haven_Law.pdf *NOW 7 days*
- Current Illinois Law
 - o You can leave your baby, **up to 30 days old**, with a staff member at any hospital, fire station, police station or emergency medical services provider in Illinois.”
 - o http://www.nationalsafehavenalliance.org/states/illinois/Illinois_Safe_Haven_Law.pdf
- Current Iowa Law
 - o You can leave your baby, **up to 14 days old**, with an employee at any hospital, emergency room or any other medical facility in Iowa.
 - o http://www.nationalsafehavenalliance.org/states/iowa/Iowa_Safe_Haven_Law.pdf
- Current Michigan Law
 - o You can leave your baby, **up to 3 days old**, with a staff member at any hospital, fire station, police station or any emergency service provider that is on duty in Michigan
 - o http://www.nationalsafehavenalliance.org/states/michigan/Michigan_Safe_Haven_Law.pdf
- * - National Laws
 - o <http://www.nationalsafehavenalliance.org/states/>



**Testimony of Nicole M. Homer, Esq.
Ho-Chunk Nation Department of Justice**

**Testimony before the Committee on Family Law
Regarding SB-326/AB-405**

November 19, 2013

- Sheko: li. Thank you, Chairman Larson (Rep. Thomas Larson) and Committee Members for allowing me to provide testimony regarding SB-326/AB-405 today.
- My name is Nicole Homer and I have been a tribal attorney with the Ho-Chunk Nation Department of Justice since December of 2008. From that time until spring of this year, my workload was predominantly in the field of Indian child welfare. Although it may be hard to believe with my dirty blond hair, hazel blue eyes, and well, beyond fair complexion, I myself am an enrolled member of the Oneida of the Thames First Nation in Ontario, Canada—a sister Nation to the Oneida Tribes here in Wisconsin and New York.
- It has been 35 years since Congress was presented with the fact that 25 to 35% of all Indian children in the country had been removed from their families at a rate five times greater than non-Indian children. Here in Wisconsin, the risk of Indian children being separated from their parents was 1,600% greater. It was this and many similarly disturbing facts that led to the enactment of the federal Indian Child Welfare Act in 1978.
- I myself began working for the Ho-Chunk Nation DOJ during a very exciting time in this State's history. It was during my first year that the Wisconsin Legislature codified the ICWA into Wisconsin statutes. **It was during that year that this Legislature unanimously declared that Wisconsin's policy is to "protect the best interests of Indian children and promote the stability and security of Indian tribes and families."** This codification was one more step in the right direction to preventing the grossly disproportionate separation of Indian children from their tribes and families as opposed to non-Indian children.
- Unfortunately, the number of Indian children being placed away from their tribal communities and families is still higher today for Indians than non-Indians. Additionally, there continues to be non-compliance with WICWA, but many tribes and the state are making efforts to address these issues.
- As such, I would like the opportunity to address the current legislation and point out concerns that the Ho-Chunk Nation has with SB-326/AB-405. There are provisions of this bill that are in direct conflict with provisions in WICWA. While the act of relinquishment is *meant* to be a voluntary act, one must not forget that ICWA and WICWA contain provisions dealing with voluntary acts as well.

- In particular, 48.028(5)(b) requires that voluntary arrangements to sever one's parental ties to their Indian child must be recorded before a judge who can explain in detail the terms and consequences of the proposed action. Furthermore, any consent given under a voluntary proceeding is not valid if given prior to or within 10 days after the birth of an Indian child.
- Therefore, SB-326/AB-405 is in conflict with this existing statute. There are no requirements within the current Safe Haven provisions, nor within the proposed language of SB-326/AB-405 that address these WICWA mandates.
- Beyond directly conflicting provisions, the Ho-Chunk Nation also believes that this bill conflicts with the intent of WICWA as well. The Nation is particularly concerned with hospital staff members being permitted to advocate for relinquishments when an Indian parent does not bring the topic up themselves. The Nation asserts that this allowance can, and will, ultimately diminish the stability and security of Indian tribes. This is because it has a direct causal effect of not only severing an Indian child's ties to his/her parent, but will result in the severing of ties between the Indian child and his/her tribe.
- The reason for this is simple. Although a hospital staff member is more often than not in a position to obtain tribal identifying information, they are not required to ask a parent if they have tribal heritage under the current proposed legislative language. If they do receive this information, they are likewise not required to provide such information to the tribe under the current Safe Haven Law, nor the proposed language in SB-326/AB-405. The same is true for law enforcement and emergency medical technician personnel. As such, tribes in Wisconsin are prevented from exerting their rights under WICWA, as the trigger for this is notice.
- The Ho-Chunk Nation, along with other Wisconsin tribes, believes there are several provisions that will assist in bringing this bill in compliance with WICWA. We would like to recognize and thank Representative Kooyenga for working with the Tribes back on January 19, 2012 to address these changes in then SB-313. It is unfortunate that these did not make it into the newest version of this bill though. These changes would include:
 1. First and foremost, there must be language added addressing WICWA mandates that relate to voluntary proceedings, and thus voluntary relinquishments. Because of the years of non-compliance, we believe explicit language is necessary, and not merely a cross-reference.
 2. Second, hospital and clinic staff must ask every person -even if they have dirty blond hair, hazel blue eyes, and fair complexion- about Indian heritage of the child and forward such information to appropriate persons, child welfare agencies, and tribes.
 1. Likewise, law enforcement & emergency medical technicians, if in position to obtain it, should ask and forward that information as well.

a. We believe that this can be addressed with a simple form that asks for the names and birth dates of parents & grandparents and the Tribe's name. This streamlines the process for these

staff personnel while providing the Tribes with the minimum information required to make membership determinations.

- We believe these small, but extremely important provisions will help this Legislature stand by the policy it set forth in 2009 and bring SB-326/AB-405.
- We again thank Rep. Kooyenga for meeting with us on November 14, 2013. And we look forward to continuing to work with him as we bring the current law and proposed bill into compliance with current state and federal law.
- Why make these changes? There is nothing more important to a tribe than its children. They are our future, and they will ultimately be the links to our past. It is likewise in their best interests to know and have the opportunity to learn about their Indian heritage and be connected with their tribal communities. As such, I sit here today on behalf of the Ho-Chunk Nation, and ask that you amend SB-326/AB-405 so that it is in compliance with existing law and the intent of the Wisconsin Indian Child Welfare Act.
- Thank you.