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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Memo No. 1

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

FROM: David L. Lovell, Senior Analyst

RE: Tribal Participation in the Intoxicated Driver Program: Issues and Options for Legislation

DATE: July 10, 2012

The purpose of the intoxicated driver program (IDP) is to reduce recidivism among persons convicted of operating a motor vehicle while intoxicated (OWI). On September 12, 2011, the Special Committee on State-Tribal Relations, with the membership that existed at that time, heard presentations regarding the IDP. Staff from the Department of Health Services (DHS) provided background regarding the program and staff of tribal clinics and human services departments raised a number of concerns about the program and requested that the committee recommend certain changes to the program. Representative Jeffrey Mursau, Chair of the Special Committee, directed the committee staff to meet with stakeholders to see what agreement could be reached on the topics raised by the tribal representatives and to report back to the committee.

On June 6, 2012, the committee staff convened a meeting at Lac du Flambeau of county personnel, their counterparts in tribal human services departments, and certain state representatives (the stakeholders meeting). This group discussed a wide range of topics relating to the IDP, including the topics raised at the September 12, 2011 meeting of the Special Committee. It reached agreement on a number of proposed policy changes for consideration by the Special Committee.<sup>1</sup>

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<sup>1</sup> In the same timeframe, the Wisconsin State-Tribal Justice Forum was considering some of the same issues related to the IDP. This forum is a group of tribal and state judges appointed by Wisconsin Supreme Court Chief Justice Shirley Abrahamson to promote and sustain communication, education, and cooperation among tribal and state court systems. Representatives of the forum approached the committee staff to recommend some of the same policy changes discussed at the June 6, 2012 meeting.

This Memo presents each of the policy changes recommended at the stakeholders meeting and additional, related topics identified by staff, and lists legislative options for their implementation.

### **USING THIS MEMO**

This Memo presents options for legislation. Legislation can create, amend, or repeal policy in the Wisconsin statutes. It can also direct policy that is embodied in the Wisconsin Administrative Code, which is created by state agencies in accordance with legislative authorization. However, legislation does not directly amend the code; rather, it writes the desired policy into the statutes.

This Memo identifies topics and presents background information and policy options related to each topic. Within an individual option, there often is language shown in brackets, [like this]. This format is used to present variations on an option. In some cases, options or variations are not mutually exclusive; in these cases, the Special Committee can select multiple options. Note the following:

- In all cases, there is the option to take no action, although this option usually is not stated in the Memo.
- In some cases, a topic is identified without policy options. These are topics that the stakeholders discussed but that do not appear to require legislative action. The Special Committee may nonetheless choose to recommend legislation to address some aspect of these topics.
- This Memo is not exhaustive; for many of the topics identified, there no doubt are more options available than are explicitly identified here. Committee members should feel free to advance any option, including options not identified in this Memo.

### **BACKGROUND: INTOXICATED DRIVER PROGRAM**

A person convicted of OWI is subject to a number of penalties, as well as administrative and rehabilitative requirements. The penalties include fines or forfeitures, imprisonment, and a period of license revocation. The administrative requirements consist of payment of a number of court fees and assessments, totaling \$691.50 on first offense and \$1,109 on second offense, and payment of a \$200 driver's license reinstatement fee; additional administrative costs apply in some cases.<sup>2</sup> The rehabilitative requirements consist of completion of the IDP. Each county community programs board under s. 51.42, Stats. (a board) is required to implement an IDP.

The first step in the IDP is an assessment of the offender. This entails examining the offender's use of alcohol or drugs and developing an individual driver safety plan for the offender.<sup>3</sup> The assessment must make one of the following findings:

1. Irresponsible use of alcohol, controlled substance, controlled substance analog, or other drug.

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<sup>2</sup> These costs relate to occupational licenses, if authorized, and ignition interlock devices, if ordered.

<sup>3</sup> s. 343.30 (1q) (c), Stats., and ch. Trans 107, Wis. Adm. Code.

2. Borderline irresponsible use of alcohol, controlled substance, controlled substance analog, or other drug.
3. Suspected alcohol, controlled substance, controlled substance analog, or other drug dependency.
4. Alcohol, controlled substance, controlled substance analog, or other drug dependency.
5. Alcohol, controlled substance, controlled substance analog, or other drug dependency in remission.

The driver safety plan is based on the findings of the assessment.<sup>4</sup> If the assessment finds the offender has irresponsibly used alcohol or other drugs (finding 1. or 2.), the plan must direct the offender to attend an educational program approved by the Department of Transportation (DOT). On first offense, the offender must attend a group dynamic traffic safety program; on subsequent offenses, the offender must attend a multiple offender traffic safety program.

If the assessment finds alcohol or drug dependency (finding 3., 4., or 5.), the plan must direct the offender to receive treatment at a facility certified by the DHS as meeting the community substance abuse service standards in ch. DHS 75, Wis. Adm. Code. The particular type of treatment required depends on the specific finding. In addition, the plan may recommend any of the following treatments: victim impact panel involvement; case management; intensive supervision; mental health or psychiatric evaluation or services; mental health or psychiatric evaluation or services; or follow-up interviews.

Next, the assessment agency refers the offender to a driver safety plan provider (i.e., to a driver safety school or a treatment facility). In the case of an educational program, the referral is to the local district of the Wisconsin Technical College System; in the case of treatment, the offender is given a list of certified facilities. The treatment facility must develop a treatment plan that is both consistent with the driver safety plan and individualized to the needs of the offender.<sup>5</sup>

The DOT monitors an offender's compliance with the IDP. The assessment agency reports to the DOT when an offender receives an assessment; in the event that an offender fails to receive an assessment in the required time period, the assessment agency reports this fact to the DOT. In the case of assessments that lead to treatment, the treatment agency reports to the assessment agency regarding an offender's compliance with the driver safety plan, and the assessment agency reports this to the DOT; in the case of assessments that lead to education, the technical college reports directly to the DOT regarding an offender's compliance or non-compliance. When an offender has complied with all requirements related to his or her OWI conviction, including payment of the cost of the assessment and

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<sup>4</sup> s. DHS 62.07 (5), Wis. Adm. Code

<sup>5</sup> s. 51.45 (9) (d), Stats., and s. DHS 75.03 (13), Wis. Adm. Code.

the cost of the treatment or education required under the driver safety plan, the DOT may reinstate the offender's driver's license.<sup>6</sup>

For a detailed summary of state law relating to intoxicated drivers, including a complete listing of penalties, see the Legislative Fiscal Bureau's 2011 Information Paper *Intoxicated Driver Laws*.<sup>7</sup> A description of the IDP is on page 10, under the heading *Alcohol Assessment and Driver Safety Plan*; a description of the driver improvement surcharge is on page 14. For additional information regarding the driver improvement surcharge, see the Legislative Audit Bureau's Report 12-5, *Driver Improvement Surcharge Funding*.<sup>8</sup>

## **ISSUES AND OPTIONS FOR LEGISLATION**

### **Assessment Facilities**

#### ***Designation of Facilities***

Under current DHS rules, each board must designate one facility to conduct assessments of offenders in its program, which must meet standards established in those rules.<sup>9</sup> To date, no tribal facilities have been designated by boards.

There was consensus at the stakeholders meeting that tribal facilities should be allowed to conduct assessments.

**Option 1.** Specify that a county may designate one or more facilities to conduct assessments, without regard to what entity operates the facility.

**Option 2.** Specify that a county shall, at the request of a tribe located in that county, designate a tribal facility to conduct assessment, if the facility meets the requirement of such facilities established in DHS rules.

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<sup>6</sup> An offender may be eligible for an occupational license after the offender has completed the assessment phase of the IDP, including development of the driver safety plan and referral to a technical college or treatment facility, if he or she is otherwise eligible for that license. An occupational license authorizes the offender to drive for purposes of his or her employment and for basic necessities, such as grocery shopping and medical appointments. [ch. Trans 117, Wis. Adm. Code.]

<sup>7</sup> This paper is available at the following Internet address:

<http://legis.wisconsin.gov/lfb/publications/Informational-Papers/Pages/Informational%20Papers.aspx>.

<sup>8</sup> This report is available at the following Internet address:

<http://legis.wisconsin.gov/lab/CurrentReportsByDate.htm>.

<sup>9</sup> ss. DHS 62.04 (1) and 62.05, Wis. Adm. Code.

### *Use of Facilities*

There was no discussion at the stakeholders meeting regarding whether tribal facilities should be limited to conducting assessments of tribal members or allowed to conduct assessments of all offenders.

**Option 1.** [Require] [Allow] that [a member of a tribe that operates a designated facility] [a member of any federally recognized Indian tribe or band] receive assessment service at a tribal facility [if convicted in the county where a tribal facility is located] [if convicted in any county].

**Option 2.** Allow any offender to receive assessment service at a tribal facility.

**Option 3.** Require, as a condition of designating a tribal facility to conduct assessments, that the facility offer assessment services to any person convicted in the county.

### *Facilities That Both Conduct Assessments and Provide Treatment*

The DHS is required to establish standards to prevent conflicts of interest that could lead assessors to order treatment, rather than education, in hopes of increasing the number of clients coming to the facility for treatment.<sup>10</sup> Accordingly, DHS rules specify that a facility that conducts assessments may not also provide treatment services.<sup>11</sup> An exception is granted to a facility if one of the following applies:

- The board operates or contracts for both assessment and treatment programming from the same agency and there are limited resources in the area.
- The board does not thereby duplicate or support duplication of established and approved programs.
- The board would be forced to dismantle existing programming or fire personnel to effect separate facilities.
- The board desires to support client choice and not exclude any provider.

**Option 1.** Provide an exception from the prohibition for a tribal facility under conditions parallel to those listed above.

**Option 2.** Provide an exception from the prohibition for any tribal facility.

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<sup>10</sup> s. 343.30 (1q) (c) 2., Stats.

<sup>11</sup> s. DHS 62.12, Wis. Adm. Code.

### ***Submittal of Assessment Reports and Driver Safety Plans to the DOT***

In an internal memorandum shared at the stakeholders meeting,<sup>12</sup> the DOT raised a number of concerns regarding the tracking of cases if more than one assessment agency is allowed per county and related matters. One comment noted that the DOT is developing an online system for submittal of assessment reports and driver safety plans to the DOT, and suggested that a tribal assessment agency be required to use this system.

**Option.** Specify that [a tribal assessment agency] [any assessment agency] must submit assessment reports and driver safety plans in the format specified by the DOT.

### **Conduct of Assessments**

#### ***Qualifications of Assessors***

Under current law,<sup>13</sup> a person who conducts assessments of offenders must be one of the following:

- A substance abuse counselor.
- A clinical supervisor.
- A social worker, marriage and family therapist, or professional counselor.
- A physician.
- A psychiatrist or child psychiatrist.
- A psychologist.
- A social worker.
- A registered nurse or licensed practical nurse.
- An occupational therapist, recreational therapist, music therapist, art therapist or speech and language therapist.
- A teacher.
- A rehabilitation counselor.
- A vocational counselor.

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<sup>12</sup> June 4, 2012 memorandum from Dale Simon to Steven Krieser, copy attached.

<sup>13</sup> s. DHS 62.05 (2), Wis. Adm. Code.

- A physical therapist.
- An educational services director.
- A clergy staff member.

Assessors must receive training in a training program approved by the DHS and must receive at least six hours of continuing education annually.<sup>14</sup>

In the past, assessors were required to receive training similar to what is currently required.<sup>15</sup> However, the assessors were also required to be one of the following:

- An alcoholism counselor, drug counselor, or alcoholism and other drug abuse counselor certified by the Wisconsin Alcohol and Drug Abuse Counselor Certification Board.
- Approved by the Department of Health and Social Services based on special circumstances documented by the Wisconsin Alcohol and Drug Abuse Counselor Certification Board.

There was consensus at the stakeholders meeting that the current requirements for assessors are inadequate, but the group did not formulate a specific recommendation as to the qualifications that should be required of assessors.

**Option 1.** Specify that assessors must meet [the qualifications specified in the 1984 Wisconsin Administrative Code] [some other specific qualifications].

**Option 2.** Direct the DHS to submit proposed legislation to [the Special Committee on State-Tribal Relations] [the appropriate standing committees of the Legislature] to establish qualifications for assessors.

### *Assessment Tools Used*

The principal method for assessing an offender's alcohol or drug use is a personal interview using the Wisconsin Assessment of the Impaired Driver (WAID) tool.<sup>16</sup> In addition, assessments may include any of the following:

- Information provided by other persons.
- Review of relevant records or reports on the client.
- An interview using substance use disorder diagnostic criteria.

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<sup>14</sup> s. DHS 62.05 (2) and (3), Wis. Adm. Code.

<sup>15</sup> s. HSS 62.03 (1), 1984 Wis. Adm. Code.

<sup>16</sup> s. DHS 62.07 (3), Wis. Adm. Code.

- An approved mental health screening tool.
- Additional information-gathering measures, instruments, and tests, including alcohol or drug testing, or lab tests deemed to be clinically useful and approved by the designated coordinator.

Participants in the stakeholders meeting discussed perceived shortcomings of the WAID but also discussed an ongoing review of the WAID and the other kinds of information assessors can use to complement the WAID. There was no clear consensus on this matter, and no specific recommendations were made.

### ***Confidentiality of the WAID Tool***

Current law provides that “The WAID tool may not be copied or distributed.”<sup>17</sup> It was explained at the stakeholders meeting that this is to prevent offenders or their attorneys from challenging the requirements of a driver safety plan based on their own interpretation of the assessor’s notes and conclusions, or to prevent attorneys from coaching their clients prior to the clients’ assessments, to influence the assessment’s findings. However, participants in the stakeholders meeting indicated that treatment providers should be allowed to see these materials, to assist them in providing treatment. Apparently, there is variability in the amount of such information that is transmitted from assessor to treatment provider, but the WAID tool itself is not shared.

There was consensus at the stakeholders meeting that the confidential status of the WAID tool should be changed, so that treatment providers could receive whatever information will help them provide appropriate treatment. No specific proposal was developed. (Note that, while this was the apparent consensus of the participants in the stakeholders meeting, DHS staff indicate that some assessors in the state would not agree.)

**Option 1.** Eliminate the requirement that the WAID tool be kept confidential.

**Option 2.** Specify that treatment providers shall have access to the tool and the specific findings of the assessor.

### **Treatment; Inclusion of Traditional Practices**

Chapter DHS 75 contains community substance abuse services standards. The rules cited earlier that specify the types of treatment indicated for the various assessment findings related to chemical dependency do so by reference to provisions of this chapter. However, the standards are general, relating primarily to the obligations of the treatment facility. For example, s. DHS 75.13, Wis. Adm. Code, relates to outpatient service. Subsection (1) describes that service in terms of counseling, intervention, and group therapy. It states the following:

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<sup>17</sup> s. DHS 62.07 (3) (a), Wis. Adm. Code

DHS 75.13 (1) SERVICE DESCRIPTION. An outpatient treatment service is a non-residential treatment service totaling less than 12 hours of counseling per patient per week, which provides a variety of evaluation, diagnostic, crisis and treatment services relating to substance abuse to ameliorate negative symptoms and restore effective functioning. Services include individual counseling and intervention and may include group therapy and referral to non-substance abuse services that may occur over an extended period.

Section DHS 75.03 (13) (b), Wis. Adm. Code, describes the required contents of a treatment plan. That paragraph reads as follows:

DHS 75.03 (13) (b) *Content.*

1. The treatment plan shall describe the patient's individual or distinct problems and specify short and long-term individualized treatment goals that are expressed in behavioral and measurable terms, and are explained as necessary in a manner that is understandable to the patient.
2. The goals shall be expressed as realistic expected outcomes.
3. The treatment plan shall specify the treatment, rehabilitation, and other therapeutic interventions and services to reach the patient's treatment goals.
4. The treatment plan shall describe the criteria for discharge from services.
5. The treatment plan shall provide specific goals for treatment of dual diagnosis for those who are identified as being dually diagnosed, with input from a mental health professional.
6. Tasks performed in meeting the goals shall be reflected in progress notes and in the staffing reports.

At the stakeholders meeting, some individuals advocated for policies that would allow the inclusion of traditional practices, such as sweat lodges and smudging, in treatment plans. No specific recommendations were developed at the meeting, but there was an apparent consensus that traditional practices should be allowed in treatment plans.

In subsequent conversations, DHS staff have indicated that there appears to be no reason that traditional practices cannot be included in treatment plans as supplemental elements, but that the references to western modes of treatment, such as counseling, in ch. DHS 75 suggest that these practices could not be the exclusive modes employed.

**Option.** Expressly state in the statutes that traditional practices may be included in treatment plans [but that they may not be the exclusive modes employed in a treatment plan].

### **Education; Inclusion of Tribal Colleges**

In general, a court may order an offender to attend a driver safety school for violation of any traffic law. The only statutory requirements for driver safety schools are that their course and mode of instruction be approved by the DOT and that the school be conducted by a municipal police department, a sheriff's office, or "any regularly established safety organization."<sup>18</sup>

A driver safety plan must require the offender to attend a driver safety school if the assessor makes certain findings.<sup>19</sup> The educational program required on first offense is a group dynamic traffic safety program; on second offense, it is a multiple offender traffic safety program.<sup>20</sup> DOT rules specify that only one traffic safety school program may be certified in each Wisconsin Technical College (WTC) district, only one group dynamics traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district, and only one multiple offender traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district.<sup>21</sup> At this time, all such programs are provided by the technical colleges.

There was consensus at the stakeholders meeting that tribal community colleges should be authorized to conduct driver safety school programs. (There are two tribal community colleges in Wisconsin, the College of the Menominee Nation and the Lac Courte Oreilles Community College.)

**Option.** Direct the DOT, at the request of a tribal community college, to certify the tribal community college as a traffic safety school program if the tribal community college meets all requirements of such a program. Specify that this requirement applies to traffic safety school programs ordered in cases of [OWI offenses only] [all traffic violations].

### **Fees and Program Funding**

#### ***Assessment and Driver Safety Plan Program Fees***

An offender is required to pay a fee to "the appropriate agency" for an assessment and for a driver safety plan program, i.e., for treatment or education.<sup>22</sup> The amount of the assessment fee is set by the county; the amount of the fee for treatment or education is set by the facility providing the service. Counties may waive all or part of the cost of treatment for offenders not able to pay the full cost of treatment; they may not waive any part of the fees for assessments or educational programs.

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<sup>18</sup> s. 345.60, Stats.

<sup>19</sup> s. 343.30 (1q) (d), Stats.

<sup>20</sup> s. DHS 62.07 (5) (a), Wis. Adm. Code.

<sup>21</sup> s. Trans 106.03 (2) (a), (3) (a), and (4) (a), Wis. Adm. Code.

<sup>22</sup> s. DHS 62.11, Wis. Adm. Code.

Under current law, tribal facilities set and collect fees for treatment; it appears that no language changes are needed to allow them to set and collect fees for assessments and education. Further, it does not appear that language changes are needed to specify that the authority of a county to waive treatment fees does not apply to fees for treatment at a tribal clinic.

### ***Driver Improvement Surcharge***

When a court convicts an OWI offender, it must impose a driver improvement surcharge of \$365. The county is required to remit 40% of the surcharge revenues to the state and to use the remaining 60% for services provided by the county community services boards.<sup>23</sup> In the 2009-10 fiscal biennium (July 1 through June 30), total surcharge revenues were approximately \$11.5 million; the counties' share of this was \$6.9 million or, on average, \$96,000 per county.

Among the uses of the state share of the surcharge revenues, the DHS makes grants (referred to as "supplemental grants") to counties to support the cost of driver assessments and treatment, in particular for cases in which counties waive fees due to the inability of the offender to pay treatment costs.<sup>24</sup> In 2011, \$744,300 was available for this assistance. Twenty nine counties applied for assistance, requesting a total of \$3.3 million. The DHS allocated the available funds in proportion to the amount requested by each county; the 29 counties received, on average, \$25,666.

At the stakeholders meeting, the driver improvement surcharge and program funding received only brief discussion. It was suggested that tribal clinics receive funding in proportion to the cases they handle. It was also suggested that, because the amount of funding available is small, the group should focus on other issues. There was no clear consensus on this matter.

**Option 1.** Specify that a county must remit to the tribe the county share of any driver improvement surcharge paid by an offender who receives treatment at a tribal facility.

**Option 2.** Specify that a tribe is eligible for a supplemental grant [in proportion to the number of offenders who receive treatment at a tribal facility].

### **Coordination With Tribal Courts**

Many of the tribes in Wisconsin have court systems.<sup>25, 26</sup> How these tribal courts are organized and how they operate vary considerably from tribe to tribe. How two tribal court systems handle OWI

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<sup>23</sup> Section 346.655, Stats. See the reference material cited in the introduction to this Memo for a discussion of the use of the surcharge revenues that counties remit to the state.

<sup>24</sup> s. 20.435 (5) (hy), Stats., and s. DHS 62.16, Wis. Adm. Code.

<sup>25</sup> The jurisdiction of tribal courts is very complex. Under 1953 Public Law 280 (PL 280) Congress transferred criminal jurisdiction on many Indian reservations from the federal government to the states; the only exception in Wisconsin is the Menominee Nation (the only so-called "non-PL 280 tribe" in this state), which shares criminal jurisdiction with the federal government. On the PL 280 reservations, the state has civil jurisdiction, and the tribe has concurrent civil jurisdiction over its members only.

<sup>26</sup> Note that many statutes enforced by the DOT explicitly recognize tribal traffic laws and convictions in tribal courts of violations of those laws. Significant among these, the DOT is authorized to count as prior offenses convictions in

cases illustrates this. The Lac Courte Oreilles Band of Lake Superior Chippewa Indians (the LCO Band) has adopted a traffic code modeled on the state traffic code. The LCO Tribal Court hears first offense OWI cases (which are civil) and refers subsequent offenses (which are criminal) to the Sawyer County District Attorney for prosecution. The LCO Tribal Court reports OWI convictions to the DOT, and also refers the offender into the IDP. The court does not impose the driver improvement surcharge on offenders convicted in its system.

The Menominee Nation has also adopted a traffic code modeled on the state traffic code. The Menominee Tribal Court hears civil and misdemeanor OWI cases. It does not report OWI convictions to the DOT or refer the offender into the IDP. However, it is in the early stages of developing an impaired drivers court, with assistance from the federal Bureau of Indian Affairs. The design of this court is very similar to the IDP, including mandatory assessment of offenders and development of treatment or educational programs for the individual offender to reduce the likelihood the offender will reoffend.

At the stakeholders meeting, DOT staff noted two results when tribal courts do not report OWI convictions to the state. The first is administrative: the DOT receives assessment reports and driver safety plans for some individuals for whom they have no record of court action or conviction. The DOT staff indicated that they treat these as voluntary assessments.<sup>27</sup> The second is substantive: if not reported to the DOT, these tribal court convictions do not result in revocation of driving privileges and do not count as prior offenses if the offender reoffends.<sup>28</sup> The group acknowledged advantages that flow from reporting by tribal courts to the DOT of OWI convictions, but also noted that this appears to be the choice of individual tribal courts, and not something the state can compel. The group did not discuss specific policies related to this topic.

### **Communication Between County and Tribal Programs and Personnel**

There was general agreement at the stakeholders meeting that various problems in administration of the IDP could be mitigated or avoided if there were greater communication between county and tribal human services staff. (The reporting of tribal court convictions, described under the preceding heading, was one example cited.) However, no specific policy ideas were presented to make this happen. Further, intergovernmental communication and cooperation is difficult to bring about by legislation. In the case of county-tribal communication, the state can direct counties to do certain things, such as requiring consultation with tribal government, but cannot direct tribes to do these things.

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tribal courts for violations of traffic laws that strictly conform to state traffic laws. [s. 343.32 (2) (a), Stats.] Further, courts in this state are required to give the same full faith and credit to the judicial records, orders, and judgments of an Indian tribal court in Wisconsin and acts of an Indian tribal legislative body as they give to the acts, records, orders, and judgments of any other governmental entity, if specified conditions are met. [s. 806.245 (1), Stats.]

<sup>27</sup> In the case of voluntary assessments, compliance with a driver safety plan is mandatory if the individual is referred to treatment, but is not mandatory if the person is referred to education. [s. 343.30 (1q) (c) 1m., Stats., and s. Trans 107.07 (6), Wis. Adm. Code.]

<sup>28</sup> Anecdotal information indicates that tribal courts have revoked driving privileges of OWI offenders, and that the DOT has honored these actions; however, if that revocation is not reported to the DOT, the DOT cannot honor it.

A program that successfully promotes county-tribal communication is the county-tribal cooperative law enforcement grant program.<sup>29</sup> Under this program, a county and tribe can, in partnership, receive a small grant (\$10,000 to \$50,000) from the Department of Justice to improve law enforcement on the reservation of the tribal partner in the grant. The grants were originally funded with general purpose revenue; in recent budgets, they have been funded with revenue paid to the state by the tribes from tribal gaming operations. The total amount of grants paid in current year 2012 was \$528,220. One condition of the grant is that the two partners develop a joint program plan. Participants in the program observe that one of the principal benefits of the program is the communication between the county and tribe that it fosters.

**Option 1.** In counties where tribal governments are located, direct county [IDP] [human services] [all programs] staff to consult [annually] with their counterparts in the tribal government.

**Option 2.** Create a program similar to the county-tribal cooperative law enforcement grant program that provides grants or another incentive for county-tribal communication. (Note that funding a new grant program in this time of constrained budgets would be difficult.)

**Option 3.** Rely on the initiative of the respective county and tribal staff to bring about the desired communication.

**Terminology: “Assessment” vs. “Screening”**

Several people at the stakeholders meeting observed that the term “assessment” does not accurately describe the first step of the IDP process. They observed that this term suggests a diagnosis, and that the WAID tool is not a diagnostic tool, but rather is a tool to screen offenders and determine which of several tracks to assign them to. This semantic distinction, they said, leads to some confusion and misunderstanding of the WAID tool and assessment process. Also, the driver improvement surcharge is sometimes referred to as an “assessment,” causing further confusion.

**Option.** Replace the term “assessment” with “screening” in the statutes that relate to the IDP.

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Attachment

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<sup>29</sup> s. 165.90, Stats.