



WISCONSIN LEGISLATIVE COUNCIL  
REPORT NO. 8 TO THE 1989 LEGISLATURE

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LEGISLATION ON TRIBAL COURTS AND TRIBAL VITAL RECORDS

1989 ASSEMBLY BILL 451, RELATING TO ENFORCEMENT OF TRIBAL  
DOMESTIC ABUSE TEMPORARY RESTRAINING  
ORDERS AND INJUNCTIONS

1989 ASSEMBLY BILL 452, RELATING TO TRIBAL VITAL RECORDS AND  
GRANTING RULE-MAKING AUTHORITY

1989 ASSEMBLY BILL 453, RELATING TO DEMERIT POINTS FOR TRIBAL  
COURT TRAFFIC CONVICTIONS

1989 ASSEMBLY BILL 454, RELATING TO TRIBAL COURT PROCEEDINGS  
AND ACTS OF TRIBAL LEGISLATURES

120723

Legislative Council Staff.  
July 20, 1989

State Capitol  
Madison, Wisconsin

RL 89-8

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March 15, 1989

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- (2) Replaced James Schlender, who resigned from the Committee, as Vice-Chairperson on March 15, 1989.
- (3) Resigned from the Committee on December 13, 1988.
- (4) Appointed to replace James Washinawatok, who resigned from the Committee, by a July 1, 1988 mail ballot.

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WISCONSIN LEGISLATIVE COUNCIL  
REPORT NO. 8 TO THE 1989 LEGISLATURE\*

LEGISLATION ON TRIBAL COURTS AND TRIBAL VITAL RECORDS

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PART I

KEY PROVISIONS OF LEGISLATION

A. 1989 ASSEMBLY BILL 451, RELATING TO ENFORCEMENT OF TRIBAL DOMESTIC ABUSE TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

1. Extends the current state criminal penalties for violation of a circuit court domestic abuse temporary restraining order or injunction to the violation of a tribal domestic abuse temporary restraining order or injunction, if specified conditions are met.

2. Requires a law enforcement officer to arrest and take a person into custody if a tribal court petitioner presents the officer with a copy of a tribal court domestic abuse temporary restraining order or injunction.

B. 1989 ASSEMBLY BILL 452, RELATING TO TRIBAL VITAL RECORDS AND GRANTING RULE-MAKING AUTHORITY

1. Requires the State Registrar of Vital Records to accept and register valid vital records for tribally-related events, which are submitted to the State Registrar by tribal courts.

2. Establishes procedures which the State Registrar must follow in handling vital records submitted by a tribal court or court orders issued by a tribal court pertaining to tribal vital records.

3. Directs the Department of Health and Social Services (DHSS) to promulgate, by rule, procedures related to tribal vital records.

C. 1989 ASSEMBLY BILL 453, RELATING TO DEMERIT POINTS FOR TRIBAL COURT TRAFFIC CONVICTIONS

Authorizes the Secretary of Transportation to assess demerit points for convictions in tribal court for violating a tribal traffic law, if the tribal traffic law violated is in strict conformity with a state traffic law.

D. 1989 ASSEMBLY BILL 454, RELATING TO TRIBAL COURT PROCEEDINGS AND ACTS OF TRIBAL LEGISLATURES

1. Requires Wisconsin courts to give full faith and credit to proceedings of any Wisconsin tribal court.

2. Establishes the conditions for granting full faith and credit and the criteria by which state courts may review tribal court proceedings.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Advisory Committee on Tribal Courts of the American Indian Study Committee (AISC) was created by the Legislative Council on July 1, 1988, at the recommendation of Speaker Tom Loftus, Chairperson of the AISC.

The Advisory Committee was directed to review the status of the recognition and use, by state courts and administrative agencies, of the official acts, records and judgments of tribal courts and other tribal administrative bodies, and to report its recommendations to the AISC.

The membership of the Advisory Committee, appointed by a July 1, 1988 mail ballot, consisted of two Representatives and six Public Members.

B. SUMMARY OF MEETINGS

The Advisory Committee held five meetings, four at the State Capitol, in Madison, and one in Rhinelander, on the following dates:

September 15, 1988	December 13, 1988
October 17, 1988 (Rhinelander)	January 17, 1989
November 9, 1988	

At the September 15, 1988 meeting, the Advisory Committee heard testimony from Attorney Douglas Endreson, from the law firm of Sonosky, Chambers & Sachse, Washington, D.C. Mr. Endreson discussed issues relating to the recognition by state courts of tribal court actions and judgments and the concepts of comity and full faith and credit. Testimony was also received from John Niemisto, Wisconsin Department of Justice, Madison, regarding the current full faith and credit statute which pertains only to the Menominee Tribe. The Advisory Committee discussed a preliminary draft of questions for a survey of tribal court personnel regarding the status and activities of tribal courts in Wisconsin.

At the October 17, 1988 meeting at Nicolet College in Rhinelander, the Advisory Committee held a public hearing to take testimony on the subject of granting full faith and credit to tribal court actions and judgments, as well as other possible legislative recommendations. A number of tribal judges and other tribal officials testified regarding the need for full faith and credit legislation. In addition, testimony was received regarding the need for legislation to address issues relating to



tribal domestic abuse injunctions and reporting of tribal motor vehicle infractions to the DOT. The Advisory Committee also considered a revised draft of questions for a survey of tribal court personnel and approved the survey for distribution to the tribes.

At the November 9, 1988 meeting, the State Registrar of Vital Statistics testified on the need for legislation authorizing the DHSS to record or otherwise handle vital records submitted to the Department from tribal courts and to comply with tribal court orders regarding vital records maintained by the State Registrar. The Advisory Committee also received testimony from representatives of the Department of Natural Resources, the DOT and the Wisconsin Counties Association. The Advisory Committee discussed potential elements of a full faith and credit bill draft for review at the next meeting of the Advisory Committee.

At the December 13, 1988 meeting, the Advisory Committee received additional testimony on the subject of full faith and credit and then considered preliminary draft legislation on that subject. The Advisory Committee also discussed possible statutory revisions which could be made, relating to interactions between the state and the tribal court system in the areas of vital records, motor vehicle demerit points and domestic abuse injunctions. Committee staff was directed to prepare draft legislation on those three subjects.

The January 17, 1989 meeting was the last meeting of the Advisory Committee. The Advisory Committee discussed the results of the survey of tribal courts, which was summarized by Committee staff. The results of the survey of tribal courts are set forth in detail in Appendix 2 to this Report.

The Advisory Committee considered draft legislation relating to demerit points for tribal court traffic convictions, tribal domestic abuse injunctions and tribal vital records, as well as a redraft of the full faith and credit bill draft. Lacking a quorum, the Advisory Committee directed Committee staff to prepare final versions of the four bill drafts for submission to the Advisory Committee by mail ballot. The four bill drafts were approved by the mail ballot.

On March 7, 1989, the AISC discussed the report of the Advisory Committee on Tribal Courts and voted to recommend the four drafts to the Legislative Council.

### C. COMMITTEE AND COUNCIL VOTES

By a January 26, 1989 mail ballot, the Advisory Committee on Tribal Courts voted to recommend the four bill drafts to the AISC, by a vote of

Ayes, 8 (Reps. Holperin and Zeuske; and Public Members Schlender, Hill, Jackson, Kittecon, Wiley and Baum); and Noes, 0.

At its March 7, 1989 meeting, the American Indian Study Committee recommended that the Legislative Council introduce the four bill drafts, by a vote of Ayes, 7 (Reps. Loftus, Zeuske and Ourada; and Public Members Gurnoe, Hill, Thunder and Keshena); Noes, 0; and Absent, 5 (Sen. Kincaid; Reps. Brancel, Coggs and Holperin; and Public Member Vele).

At its April 26, 1989 meeting, the Legislative Council voted to introduce the four bill drafts by a vote of Ayes, 14 (Sens. Risser, Kreul, Moen and Strohl; and Reps. Loftus, Panzer, Clarenbach, M. Coggs, Gruszynski, Hauke, Kunicki, Prosser, Tesmer and Zien); Noes, 0; Absent, 6 (Sens. Czarnecki, Davis, Ellis, George and Helbach; and Rep. Tregoning); and Not Voting, 1 (vacancy).

#### D. STAFF MATERIALS

The Appendix lists all materials received by the Special Committee. The following documents, prepared by the Legislative Council Staff, may be of particular interest. These and other materials listed in the Appendix to this Report are available at the Legislative Council offices:

1. MEMO NO. 2, Description of s. 806.245, Stats., Relating to Full Faith and Credit for the Acts and Proceedings of the Menominee Tribal Court and the Menominee Tribal Legislature, describes the history of the current full faith and credit statute, provides background on the doctrine of full faith and credit and describes the current statute in detail.

2. MEMO NO. 4, Possible Statutory Revisions Relating to Certain Interactions Between the State and the Tribal Court System, provides background information on vital statistics records, motor vehicle demerit points and domestic abuse injunctions.

PART III

DESCRIPTIONS OF BILLS

A. 1989 ASSEMBLY BILL 451, RELATING TO ENFORCEMENT OF TRIBAL DOMESTIC ABUSE TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

1. Background

Assembly Bill 451 was developed in response to testimony, by Vilas County Circuit Court Judge James Mohr and Lac du Flambeau Tribal Attorney James Jannetta, regarding a problem which the Vilas County Circuit Court and the Lac du Flambeau Tribal Court have attempted to address relating to docketing and serving notice of tribal domestic abuse injunctions. The problem relates to the difficulty of serving notice of a circuit court domestic abuse temporary restraining order in rural areas, such as Vilas County, where the county seat is a great distance from the Lac du Flambeau Reservation.

Judge Mohr and Mr. Jannetta explained that the Tribal Court and Circuit Court jointly developed a process whereby the Tribal Court would issue the temporary restraining order, which would permit more prompt service on the reservation. The tribal order would then be docketed in the Vilas County Circuit Court because, while violation of a state court order is a crime, the Lac du Flambeau Tribal Court cannot enforce violations of a temporary restraining order with criminal penalties because it does not have criminal jurisdiction. However, the process of docketing a tribal court order in the circuit court was questioned, since there is no provision in the statutes for such a procedure.

To address this problem, Mr. Jannetta developed draft legislation, for consideration by the Advisory Committee, to permit such docketing of tribal domestic abuse orders in the circuit court. The Advisory Committee used Mr. Jannetta's draft as a basis for developing Assembly Bill 451.

2. Description of Bill

Assembly Bill 451 amends current law to provide that a law enforcement officer is required to arrest and take a person into custody, if a tribal court petitioner presents the officer with a copy of a tribal court domestic abuse temporary restraining order or injunction issued against the person. The tribal order or injunction must be issued pursuant to a tribal domestic abuse ordinance which is substantially in accordance with state law and must be filed with a Wisconsin circuit court in accordance with procedures set forth in the draft.

The Bill extends the current state criminal penalties for violation of a circuit court domestic abuse restraining order or injunction to the violation of a tribal domestic abuse restraining order or injunction, if all of the following conditions are met:

a. The circuit court has issued an order permitting the filing of tribal domestic abuse orders and injunctions with the circuit court.

b. An authenticated copy of the tribal order or injunction is filed with the clerk of circuit court.

c. The tribal order or injunction provides notice to the respondent that the tribal order or injunction has been filed with the circuit court and that violation of such an order or injunction may result in arrest and imposition of criminal penalties, including fine or imprisonment, or both.

## B. 1989 ASSEMBLY BILL 452, RELATING TO TRIBAL VITAL RECORDS AND GRANTING RULE-MAKING AUTHORITY

### 1. Background

Assembly Bill 452 was prepared in response to testimony received by the Advisory Committee from the State Registrar of Vital Statistics in the DHSS. In that testimony, the State Registrar cited a number of instances in which a tribal court action may need to be recorded or otherwise handled by the State Registrar of Vital Statistics, but where there appears to be a lack of clear statutory authority to do so. In some instances, the State Registrar has had an informal arrangement with tribal governments to record or otherwise handle tribal vital records, despite the absence of clear statutory authority for such arrangements.

### 2. Description of Bill

Assembly Bill 452 creates a statutory procedure for handling tribal vital records by directing the DHSS to accept and register valid vital records submitted by tribal courts, consistent with the manner in which vital records submitted by local units of government are handled. The DHSS is further directed to recognize and honor orders from tribal courts relating to vital records which pertain to tribally-related events.

The Bill also directs the DHSS to promulgate administrative rules which establish procedures regarding the contents, acceptance and registration of tribally-related vital records submitted to the State Registrar by tribal courts, as well as procedures for responding to tribal court orders regarding tribally-related vital records.

Current ch. 69, Stats., contains a number of provisions regarding acceptance and registration by the State Registrar of Vital Records submitted by local or city registrars, county registrars of deeds or clerks of circuit courts. Assembly Bill 452 provides that wherever ch. 69 provides for such acceptance and registration, the State Registrar shall also accept and register comparable tribally-related vital records submitted by Wisconsin tribal courts.

Current ch. 69 also provides for correction or delayed registration, without court order, of certain vital records submitted by the aforementioned local officials. Assembly Bill 452 requires the State Registrar to correct or register comparable vital records submitted by a Wisconsin tribal court.

Finally, current ch. 69 provides for correction, delayed registration, copying or determining the validity of, or disclosing information from, vital records, pursuant to a court order. Assembly Bill 452 requires the State Registrar to treat, in a like manner, comparable vital records pertaining to tribally-related events, pursuant to an order of a Wisconsin tribal court.

C. 1989 ASSEMBLY BILL 453, RELATING TO DEMERIT POINTS FOR TRIBAL COURT TRAFFIC CONVICTIONS AND GRANTING RULE-MAKING AUTHORITY

1. Background

Assembly Bill 453 was prepared in response to testimony received by the Advisory Committee from James Jannetta, Tribal Attorney, Lac du Flambeau Band, and Gerri K. Allen, Court Clerk, Lac du Flambeau Tribal Court. Mr. Jannetta and Ms. Allen discussed an informal arrangement which has been implemented between the Lac du Flambeau Tribal Court and the State Department of Transportation (DOT) regarding driver's license demerit points. Ms. Allen explained that the Lac du Flambeau Court reports directly to the DOT, utilizing the same form used by circuit courts, regarding tribal court traffic convictions, for purposes of state assessment of driver's license demerit points. The tribal court also reports to DOT on tribal court orders to suspend a person's license for first-offense convictions for operating a motor vehicle while intoxicated (OWI).

Current s. 343.32 (2) (a), Stats., provides that the DOT may suspend or revoke a person's operating privilege if, by the records of the DOT, the person appears to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws or any local ordinance enacted under ch. 349, Stats.

For purposes of determining when to suspend or revoke an operating privilege, the DOT is currently authorized to adopt, by administrative rule, a method of weighing traffic convictions by their seriousness and assigning demerit points to various traffic infractions. This provision does not appear to provide clear statutory authority for the DOT to take into account traffic convictions obtained in a tribal court involving assessment of driver's license demerit points or suspension of a license for an OWI conviction.

## 2. Description of Bill

Assembly Bill 453 amends s. 343.32 (2) (a), Stats., to refer not only to violations of state traffic laws or local ordinances enacted under ch. 349, Stats., but to also refer to convictions in a tribal court for violating a tribal traffic law, if the tribal traffic law violated is in strict conformity with state traffic laws.

## D. 1989 ASSEMBLY BILL 454, RELATING TO TRIBAL COURT PROCEEDINGS AND ACTS OF TRIBAL LEGISLATURES

### 1. Background

Section 806.245, Stats., was created by legislation introduced as 1981 Assembly Bill 825. As originally introduced, 1981 Assembly Bill 825 would have required state courts to give full faith and credit to properly authenticated acts of tribal legislatures and the acts, records, proceedings and judgments of tribal courts of record. Amendments limited the application of the provisions of the Bill to the Menominee Indian Tribe and modified the conditions on the granting of full faith and credit.

Current s. 806.245 requires Wisconsin courts to give full faith and credit to proceedings of the Menominee Tribal Court and acts of the Menominee Tribal Legislature. The doctrine of full faith and credit is established in art. IV, s. 1, U.S. Const., as follows:

SECTION 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be provided, and the effect thereof.

The doctrine of full faith and credit requires a court to give the same force and effect to the judgments of another jurisdiction as it does

to its own judgments. The purpose of this provision is to avoid having matters which are settled in the courts of one state relitigated, with a possibly different outcome, in another state.

Although art. IV, s. 1, is drafted broadly to apply to a wide variety of public documents and proceedings, the main effect of this provision has been in relation to court judgments. The primary types of judgments affected are:

a. Those in which the judgment rendered in the first state is offered as the basis for proceedings to enforce the judgment in another state; and

b. Those in which the judgment of the first state is offered in the courts of another state as a defense in new or related proceedings involving the same facts as the original suit.

Current s. 806.245 imposes four conditions on the granting of full faith and credit to the acts and proceedings of the Menominee Tribal Court and Menominee Tribal Legislature:

a. The Menominee Tribal Court must grant full faith and credit to Wisconsin court proceedings and other governmental acts;

b. Copies of acts and proceedings of the Tribal Court or Legislature must be authenticated;

c. The Tribal Court must be a court of record; and

d. The Wisconsin court must review the validity of the Tribal Court judgment, to determine whether: (1) the tribal court had jurisdiction of the subject matter and the person named in the judgment; (2) the judgment is final; (3) the judgment is on the merits; (4) the judgment was obtained without fraud, duress or coercion; (5) the tribal court complied with its own procedures; and (6) the tribal court proceedings complied with the Indian Civil Rights Act.

## 2. Description of Bill

Assembly Bill 454 extends the application of the current statute to all tribes in Wisconsin which have established a tribal court. The Bill clarifies the language of the statute and repeals the following four conditions which are imposed in present s. 806.245 (4) on state court recognition of the acts and proceedings of a tribal court: (a) whether the judgment is on the merits; (b) the absence of fraud, duress or

coercion; (c) compliance with tribal court procedures; and (d) compliance with the Indian Civil Rights Act.

Although the current statute refers to full faith and credit, these four conditions are not consistent with the doctrine of full faith and credit. Full faith and credit obliges one court to accept the judgments of another court; whereas these four conditions permit a state court to undertake a substantial review of the grounds for a tribal court judgment and the procedures followed by a tribal court.

Assembly Bill 454 retains the conditions in s. 806.245 (4) (a) and (b), which relate to jurisdiction of the tribal court and finality of the tribal court judgment. These conditions are part of the doctrine of full faith and credit.

MCP:PS:all;kja



COMMITTEE MATERIALS

Staff Materials

1. MEMO NO. 1, Preliminary Draft of Questions for Possible Survey of Tribal Court Personnel (September 8, 1988).
2. MEMO NO. 2, Description of s. 806.245, Stats., Relating to Full Faith and Credit for the Acts and Proceedings of the Menominee Tribal Court and the Menominee Tribal Legislature (September 8, 1988).
3. MEMO NO. 3, Revised Draft of Question for Survey of Tribal Court Personnel (October 6, 1988).
4. MEMO NO. 4, Possible Statutory Revisions Relating to Certain Interactions Between the State and the Tribal Court System (December 6, 1988).
5. MEMO NO. 5, WLCS: 443/2, Relating to Tribal Court Proceedings and Acts of Tribal Legislatures (January 10, 1989).
6. MEMO NO. 6, Results of Survey of Tribal Courts (January 11, 1989; revised February 27, 1989).

Other Materials

1. Note, "Recognition of Tribal Decisions in State Courts," 37 Stanford Law Review 1937 (May 1985).
2. Draft of a proposal to provide full faith and credit for all Wisconsin tribes, prepared by James M. Janetta (September 23, 1988).
3. Draft of a proposal to provide for state criminal enforcement of domestic abuse injunctions issued by a tribal court which have been docketed with the circuit court, prepared by James M. Janetta (September 23, 1988).
4. Memorandum to Members of the American Indian Study Committee from James M. Janetta, Lac du Flambeau Tribal Attorney, regarding the full faith and credit and domestic abuse injunction drafts (September 23, 1988).

5. Letter from James B. Mohr, Judge, Vilas County Circuit Court, to James M. Janetta, Lac du Flambeau Tribal Attorney, expressing support for the domestic abuse injunction draft (October 5, 1988).

6. Statement of Michael W. Allen, Sr., Tribal Council President of the Lac du Flambeau Band of Lake Superior Chippewa to the Advisory Committee on Tribal Courts (November 9, 1988).

RESULTS OF SURVEY OF TRIBAL COURTS

This Appendix sets forth the results of the Survey of Tribal Courts which was conducted by the Advisory Committee on Tribal Courts of the American Indian Study Committee.

The Survey was developed to provide information and data to the Advisory Committee on Tribal Courts to assist it in assessing the need for legislation relating to tribal courts.

The Survey was submitted to the various tribes and bands in Wisconsin on October 24, 1988. As of February 10, 1989, all 11 tribes and bands to whom the Survey was distributed had submitted a response.

Of the 11 tribes and bands responding to the Survey, the following seven tribes and bands indicated that they have a tribal court:

Bad River	Red Cliff
Lac Courte Oreilles	St. Croix
Lac du Flambeau	Sokaogon
Menominee	

The following four tribes and bands indicated that they do not have a tribal court:

Forest County Potawatomi  
Oneida  
Stockbridge-Munsee  
Winnebago

Of the four tribes and bands which currently do not have a tribal court, three indicated that they are considering establishing a tribal court, while Forest County Potawatomi is not.

Part I of this Appendix sets forth the results of the surveys completed by the seven tribes and bands which have a tribal court. Part II of this Appendix sets forth the results of the surveys completed by the four tribes and bands which do not currently have a tribal court.

PART I. SURVEY RESULTS: TRIBES WHICH HAVE A TRIBAL COURT

Tribes and Bands Responding:

Bad River	Red Cliff
Lac Courte Oreilles	St. Croix
Lac du Flambeau	Sokaogon
Menominee	

A. Authority and Jurisdiction of Tribal Court

1. Under what authority is the tribal court established? [For example, under the tribe's Constitution or the tribal code?]

Constitution and bylaws (Bad River, St. Croix)  
Constitution (Menominee, Red Cliff)  
Constitution, bylaws and treaties (Sokaogon)  
Constitution, bylaws and tribal code (Lac du Flambeau [Flambeau],  
Lac Courte Oreilles [LCO])

2. When was the tribal court first established?

Bad River, 1979 (also operated previously)  
Flambeau, late 1940's  
LCO, 1976  
Menominee, 1930's  
Red Cliff, 1972  
St. Croix, 1984  
Sokaogon, 1983

3. If the tribal court was inactive during any period since it was first established, when did the court begin its current period of activity?

Flambeau, 1983  
Menominee, 1976  
Other tribes, not applicable

4. What subjects are within the jurisdiction of the tribal court?

Bad River: Natural resources, water and sewer, bingo, land leases, name changes, marriages  
Flambeau: Child welfare and custody, divorce, paternity, adoption, termination of parental rights, traffic, natural resources, solid waste, civil matters  
LCO: Conservation, divorces, marriages, legal separations, small claims, paternity, adoptions, unlawful detainer, landlord and tenant, civil matters, Indian child welfare, child custody, name changes, child support  
Menominee: General jurisdiction  
Red Cliff: Conservation, snowmobiles and off-road vehicles, automobiles, animal control, business and tax law, bingo, land, housing, historic preservation, name changes, fish marketing, utilities, Children's Code, miscellaneous  
St. Croix: Natural resources, housing  
Sokaogon: Conservation, domestic relations, child welfare, general civil matters, plans for criminal procedures in alcohol- and drug-related cases

5. What subjects are not within the jurisdiction of the tribal court?

Criminal, traffic (Bad River, LCO)  
Criminal (Flambeau, Red Cliff, Sokaogon)  
All matters other than natural resources and housing (St. Croix)  
Felonies under the Major Crimes Act, criminal prosecution of non-Indians (Menominee)

B. Tribal Court Judges

1. How many judges does the tribal court have?

Two (Bad River, Flambeau, LCO, Red Cliff, St. Croix, Sokaogon)  
Five (Menominee)

2. Is there a chief judge?

Yes (All)

3. Does the tribal court have reserve judges?

Yes (LCO, St. Croix, Sokaogon)

No (Bad River, Flambeau, Menominee, Red Cliff)

4. Are the tribal judges employed full-time or part-time?

Part-time (Bad River, Flambeau, LCO, St. Croix, Sokaogon)

Three full-time, two part-time (Menominee)

One full-time, one part-time (Red Cliff)

5. Are the tribal judges elected or appointed to their positions?

Appointed (All)

6. If tribal judges are appointed, who makes the appointment?

Tribal Council (Bad River, Flambeau, Red Cliff, St. Croix, Sokaogon)

Tribal Governing Board (LCO)

Tribal Legislature (Menominee)

7. For what period of time is a tribal judge elected or appointed?

Two years (Bad River, LCO)

Three years (Flambeau, St. Croix)

Two and four years (Menominee)

Life (Red Cliff and Sokaogon)

8. Is there any limitation on the number of terms a tribal judge may serve?

None (Bad River, Flambeau, LCO, Menominee, St. Croix)

Not applicable (Red Cliff, Sokaogon)

9. What qualifications must a tribal judge have?

Bad River: 25 years old, general knowledge of Bad River laws  
Flambeau: No response  
LCO: 2 years of college, knowledge of tribal law and people, tribal member  
Menominee: 35 years old, high school diploma, tribal member  
Red Cliff: (Chief Judge) 25 years old, no felony convictions, high moral character and reputation, 3 years experience as judge, 3 years experience in a field related to civil or criminal justice, knowledge and understanding of the community and people, 4-year college degree in a related field  
St. Croix: 18 years old, good moral character and integrity, no felony conviction, no misdemeanor conviction in previous 12 months, qualified to serve as judge, knowledge of St. Croix Tribal Code and ordinances and federal and state laws  
Sokaogon: Knowledge in tribal, federal and state laws and procedures, educational background in tribal government, laws, customs and traditional lifestyles, 25 years old, good moral character and integrity, no convictions

10. How many of the current tribal judges are lawyers?

One (Menominee)  
One attending law school (LCO)  
None (Bad River, Flambeau, Red Cliff, St. Croix, Sokaogon)

11. What kind of training do the tribal judges participate in either before or during their tenure as tribal judge?

National Judicial College, Reno, NE (LCO, St. Croix, Sokaogon)  
National Indian Justice Center, Petalima, CA (Menominee, Red Cliff, Sokaogon)  
American Indian Lawyer Training Program (St. Croix)  
Various other training programs (Bad River, Red Cliff)  
No response (Flambeau)

C. Other Tribal Court Personnel

1. Does the tribal court employ any administrative personnel in addition to the tribal judges?

Yes (All)

2. If so, how many and what types of administrative employees are there?

Clerk of Court (All)  
Deputy or Assistant Clerk of Court (Flambeau, LCO, Menominee, Red Cliff)  
Bailiff (Menominee)  
Secretary (Menominee, Sokaogon)  
Tribal Attorney, Prosecutor, Court Advisor (Flambeau, Red Cliff,  
St. Croix, Sokaogon)  
Paralegals (Red Cliff)

D. Tribal Court Proceedings

1. Does the tribal court keep a record of its proceedings?

Yes (All)

2. If so, in what form and for how long?

Tape-recording (All)  
Written transcripts (Sokaogon)  
Docket sheets (Flambeau)  
Permanent record retention (All)

3. Are transcripts or electronic recordings of the proceedings available to the parties in a case?

Yes (Bad River, LCO, Menominee, Red Cliff, St. Croix, Sokaogon)  
No (Flambeau)

4. Are court records available to the public?

Yes (All)

5. If so, what, if any restrictions are placed on their release?

Juvenile matters kept confidential (Bad River, Menominee, Red Cliff,  
St. Croix)  
Court order, at request of parties (LCO)  
No restrictions (Sokaogon)  
Juvenile and child welfare proceedings kept confidential (Flambeau)



6. Does the tribal court have written rules of procedure?

Yes (Bad River, LCO, Menominee, Red Cliff, St. Croix, Sokaogon)  
No (Flambeau)

7. Are final judgments of the tribal court reviewable by a higher court or other appellate review?

Yes (All)

8. If so, describe the nature of the review.

Three-judge panel appointed by Tribal Council (Bad River)  
Tribal governing board (LCO)  
Three-judge appellate court (Menominee)  
Three-judge panel selected from other reservations (Flambeau, Red Cliff)  
Appellate court appointed by Tribal Council (St. Croix)  
Three-judge panel from Great Lakes Tribal Judges Association (Sokaogon)

E. Interaction with State Courts or Administrative Agencies

1. Has the tribal court encountered problems in interacting with either the state court system or state or local administrative agencies?

Yes (LCO, Red Cliff, Sokaogon)  
No (Bad River, Flambeau, Menominee, St. Croix)

2. If so, explain how often and the typical circumstances.

LCO: Necessary to file foreign judgments in circuit court so that law enforcement officers honor court orders, Indian Child Welfare Act judgments occasionally not honored  
Red Cliff: Occasional problems with foster care payments for long-term placements and subsidized adoptions  
Sokaogon: State courts do not recognize tribal court jurisdiction in natural resources cases

3. Has any party to a tribal court proceeding attempted to obtain state court recognition of a tribal court act, record, proceeding or judgment?

Yes (Flambeau, LCO, Red Cliff)  
No (Bad River, Menominee, St. Croix, Sokaogon)

4. If so, please explain the circumstances and the results.

Flambeau: Divorce judgments for purposes of child support and domestic abuse injunction  
LCO: Restraining orders not recognized, child custody proceedings not enforceable  
Red Cliff: Child welfare, conservation, housing evictions, minor problems with child welfare

F. Other Tribal Decision-Making Bodies

1. Does the tribe have any adjudicative bodies, other than a tribal court, that review violations of tribal ordinances or that have court-like adjudicative functions over particular subject matters?

Yes (Sokaogon)

No (Bad River, Flambeau, LCO, Menominee, Red Cliff, St. Croix)

2. If the tribe has such adjudicative bodies, what are the bodies called?

Sokaogon: Tribal Council adopts rules and regulations with recommendations from appointed boards and committees

3. What are the functions of the adjudicative bodies?

Sokaogon: Review and decision-making

4. Does the tribe have any legislative, executive or administrative body which routinely make discretionary decisions which can affect the rights of individuals (for example, a tribal zoning board, a tribal executive body which handles child welfare matters or a tribal body administering a building code)?

Yes (Bad River, LCO, St. Croix)

No (Flambeau, Menominee, Red Cliff, Sokaogon)

5. If the tribe has such legislative, executive or administrative bodies, what are the bodies called?

Bad River: No response  
LCO: Tribal Governing Board  
St. Croix: Tribal Council

6. What are the functions of such legislative, executive or administrative bodies?

Bad River: No response  
LCO and St. Croix: General responsibilities for tribal governance

PART II. SURVEY RESULTS: TRIBES WHICH DO NOT HAVE A TRIBAL COURT

Tribes and Bands Responding:

Forest County Potawatomi  
Oneida  
Stockbridge-Munsee  
Winnebago

A. Plans to Establish a Tribal Court

1. Is your tribe currently considering establishment of a tribal court?

Yes (Oneida, Stockbridge-Munsee, Winnebago)  
No (Forest County Potawatomi)

2. If your tribe intends to establish a tribal court, when is the court expected to be in operation?

Oneida, unknown  
Stockbridge-Munsee, 1989  
Winnebago, within 2 years

3. If your tribe is in the process of establishing a tribal court, what sources of information or guidance has the tribe used in establishment of the court system?

Oneida: Unknown  
Stockbridge-Munsee: Are in third and final year of a federal grant specifically to establish a tribal court system. Have reviewed, amended and revised existing ordinances and have developed new ordinances. Currently are attempting to obtain tribal judges.  
Winnebago: Have employed a legal consultant to conduct preliminary research; have created a judiciary committee; have contacted other Wisconsin tribes with established courts for suggestions and guidance; and plan on hiring a full-time, in-house attorney.

4. If your tribe is not considering establishment of a tribal court, explain why not.

Forest County Potawatomi: No funds.

B. Other Tribal Decision-Making Bodies

1. Does the tribe have any adjudicative bodies, other than a tribal court, that review violations of tribal ordinances or that have court-like adjudicative functions over particular subject matters?

Yes (All)

2. If the tribe has such adjudicative bodies, what are the bodies called?

Oneida: Child Protective Board, Housing Authority, Utilities Commission, Conservation Board, Land Committee, Trust Committee and Personnel Committee

Stockbridge-Munsee: Stockbridge-Munsee Tribal Council

Winnebago: Wisconsin Winnebago Business Committee

Forest County Potawatomi: Tribal Executive Council

3. What are the functions of the adjudicative bodies?

Oneida: To formally hear complaints, actions, violations, infractions, abuses, breaches of agreements; to make recommendations, orders, directives to departments of the Oneida Tribe and its employes and tribal members.

Stockbridge-Munsee: To review actions of committees and boards that are empowered to carry out specific tasks and responsibilities. Issues that generally surface requiring council review are of a personnel nature and do not relate as much to the substance of any program.

Winnebago: To review (and correct, if necessary) action taken by committees and boards under its jurisdiction and authority. To ensure that all proper procedures have been followed in making decisions.

Forest County Potawatomi: Tribal Executive Council refers violations of some ordinances and Indian Child Welfare Act matters to state court.

4. Does the tribe have any legislative, executive or administrative body which routinely make discretionary decisions which can affect the rights of individuals (for example, a tribal zoning board, a tribal executive body which handles child welfare matters or a tribal body administering a building code)?

Yes (All)

5. If the tribe has such legislative, executive or administrative bodies, what are the bodies called?

Oneida: Oneida General Tribal Council; Oneida Business Committee  
Stockbridge-Munsee: Conservation and Forestry Committees, Bingo Board, Housing Authority, Child Protective Board (Indian child welfare issues), Education Committee and others.  
Winnebago: Bingo Control Board, Housing Authority, Health Committee, Law Enforcement Committee, Education Committee and others.  
Forest County Potawatomi: Tribal Executive Council

6. What are the functions of such legislative, executive or administrative bodies?

Oneida: The Oneida General Tribal Council is the ultimate appellate body of the Oneida Tribe, unless delegated otherwise. To develop and enact ordinances, regulations, rules, policies and procedures for the enforcement of tribal laws.  
Stockbridge-Munsee: To carry out program goals and objectives for the specific program for which they are responsible and to suggest new policy and programmatic changes to the council.  
Winnebago: To develop controlling policy for the programs for which they are responsible; to put programs in operation and to report progress, and necessary suggestions, to the tribal governing body.  
Forest County Potawatomi: As defined by the Tribal Constitution.