Pride of the Ojibwe
13394 W Trepania Road * Hayward WI 54843
715-634-8934 Phone * 715-634-4797 Fax

May 21, 2025

Representative Snyder, Chair
Committee on Children and Families
Room, 307 North Wisconsin State Capitol
Madison, WI 53708

Re: Comments in Opposition to AB 237 – Amendments Required due to Federal Preemption

Dear Chair Snyder:

We thank you and the Assembly's Committee on Children and Families for allowing the Lac Courte Oreilles Band of Lake Superior Chippewa Indians ("LCO") the opportunity to submit written comments on this Bill that negatively impacts the Tribe. Since 2012, Tribes in Wisconsin have been expressing their concern that the State of Wisconsin's Safe Haven Law is in direct conflict with the federal Indian Child Welfare Act ("ICWA"). We call upon legislative decision-makers to make amendments to the state's Safe Haven Law that would bring it in conformity with the ICWA.

Child safety is of the utmost importance to LCO. Let it be clear; the Tribe does not support or condone infant homicide. We are committed to working with our state and non-governmental partners in identifying and implementing family support and child safety measures that are aimed at aiding families. We firmly believe in providing families with the resources and knowledge necessary to prevent infant homicide. Thus, there is not a belief that Safe Haven is a "bad law" per se, but there are valid concerns that (a) it is in direct conflict of the ICWA and thus amendments are required (b) there are unintended consequences of the law and (c) preventing infant homicide requires more than a Safe Haven Law alone.

Brief ICWA Overview

Already heavily hit by the removals during the boarding school era[1] (roughly 1869-1960s), many Tribal families were subjected to the U.S. Bureau of Indian Affairs' Indian Adoption Program in the 1950s and 1960s. This Program actively recruited non-Native adoptive families from the east to adopt Native children by disparaging Native families and Tribal culture with sensationalized statements like "unwed Indian mothers, deviant extended families, and hopelessly impoverished and alcoholic parents."[2] Tribal families, at alarming rates, had to likewise endure state social workers inserting themselves into Tribal families' lives and analyzing them through a white middle-class lens during this period leading up to the late 1970s. Instead of finding actual abuse, social workers would instead say they found instances of *social deprivation* for behaviors or living standards that were

[1] DAVID W. ADAMS, EDUCATION FOR EXTINCTION 27 (1995) (finding that by 1926 nearly 83% of Indian school-age children were attending boarding schools).
[2] Margaret D. Jacobs, "Remembering the 'Forgotten Child': The American Indian Child Welfare Crisis of the 1960s and 1970s," 37 Am. Indian Q. 136, 144 (2013).

completely normal and appropriate within the constructs of Tribal traditional values and customs. Despite no factual safety risk being found, Native children were whisked away from their families and Tribal communities forever.

Across the country, 25%-35% of Native children were being removed from their families. A staggering 85% of these removals resulted in Native children being placed outside their families despite relatives or tribal members being ready and able to care for them. Here in Wisconsin, you were 1,600% more likely to be removed if you were a Native child versus a non-Native child pre-enactment of the ICWA. Ultimately, Congress enacted the ICWA in 1978 to address this grossly disproportionate removal of Native children from not just their families, but importantly their Tribal communities.

Even with the efforts Wisconsin has made since state codification of the ICWA in 2009, DCF reported the entry and out-of-home care rate for Native children was 4.5 times higher than the total Native children living in the state for the 2023 calendar year.[3] In 2019, Wisconsin had the 2nd highest Native disproportionality rate in the country, with a 5.87% disproportionality rate for Native children in foster care according to the National Indian Child Welfare Association.[4] As such, Tribes continue to fight and be vocal advocates for their Tribal children even 46 ½ years after the passage of the ICWA.

The ICWA is an entirely unique child welfare law in that it protects the best interests of both Indian children and Tribes – and these are interwoven interests. "Culturally, the chances of Indian survival are significantly reduced if our children, the only real means for the transmission of the tribal heritage, are to be raised in non-Indian homes and denied exposure to the ways of their People."[5] With that congressional testimony from Mississippi Band of Choctaw Indians' Tribal Chief, Calvin Isaac, Congress found that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children."[6] Likewise, it is the policy of Wisconsin to "[p]rotect the best interests of Indian children and promote the stability and security of Indian tribes and families by…placing an Indian child in a placement that reflects the unique values of the Indian child's tribal culture and that is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian child's tribe and tribal community."[7]

Ultimately, the ICWA is known across the country as the *gold standard* in child welfare.[8] This is because research and tried experience both show that children are best served by preserving their connections with family and community – for all children, Native and non-Native; newborns and teens.

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[3] Wisconsin Department of Children and Families, *Wisconsin Out-of-Home Care (OHC) Report Calendar Year 2023*, at 6, https://dcf.wisconsin.gov/files/publications/pdf/5692.pdf (last visited May 19, 2025).

[4] National Indian Child Welfare Association, *Disproportionality in Child Welfare Fact Sheet*, Oct. 2021, https://old.nicwa.org/wp-content/uploads/2021/12/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf.

[5] *Haaland v. Brackeen*, 143 S. Ct. 1609, 1623 (2023) (quoting *Hearing on S. 1314 Before the Subcomm. on Indian Affs. and Pub. Lands of the H. Comm. on Interior and Insular Affs.*, 95th Cong., 2d Sess., 193 (1978) (statement of the Tribal Chief of the Miss. Band of Choctaw Indians)).

[6] 25 U.S.C. § 1901(3).

[7] Wis. Stat. § 48.01(2).

[8] Casey Fam. Programs, Child and Family Services Practice Model (2021), https://www.casey.org/media/101-Practice-Model-1.pdf (stating "[t]he principles of ICWA have been part of Casey's practice for years and are embodied in the values of the CFS practice model. The explicit adoption of these principles as the gold standard allows Casey Family Programs to demonstrate why ICWA should be implemented, and how it can serve all children and families in the best possible ways.")

Federal Preemption: Safe Haven is in Direct Conflict with the Federal ICWA

Federal preemption is the legal doctrine that says federal law supersedes conflicting state law. Federal law can either expressly or impliedly preempt state law. The ICWA sets forth minimum federal standards for child custody proceedings involving Indian children, including minimum standards for the placement of Indian children in adoptive homes.[9] While states can offer greater protections, they are not permitted to offer less. Ultimately, the ICWA contains an express federal preemption clause.[10]

The United States Supreme Court most recently addressed the issue of federal preemption as it applies to the ICWA in 2023. In *Brackeen*, the Supreme Court stated:

> It is true that Congress lacks a general power over domestic relations, *In re Burrus*, 136 U.S. 586, 593–594, 10 S.Ct. 850, 34 L.Ed. 500 (1890), and, as a result, responsibility for regulating marriage and child custody remains primarily with the States, *Sosna v. Iowa*, 419 U.S. 393, 404, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). See also * 277 *Moore v. Sims*, 442 U.S. 415, 435, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979). But the Constitution does not erect a firewall around family law. On the contrary, when Congress validly legislates pursuant to its Article I powers, we "ha[ve] not hesitated" to find conflicting state family law preempted, "[n]otwithstanding the limited application of federal law in the field of domestic relations generally." *Ridgway v. Ridgway*, 454 U.S. 46, 54, 102 S.Ct. 49, 70 L.Ed.2d 39 (1981) (federal law providing life insurance preempted state family-property law); see also *Hillman v. Maretta*, 569 U.S. 483, 491, 133 S.Ct. 1943, 186 L.Ed.2d 43 (2013) ("state laws 'governing the economic aspects of domestic relations ... must give way to clearly conflicting federal enactments' " (alteration in original)). In fact, we have specifically recognized Congress's power to displace the jurisdiction of state courts in adoption proceedings involving Indian children. *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382, 390, 96 S.Ct. 943, 47 L.Ed.2d 106 (1976) (*per curiam*).[11]

The Supreme Court found the ICWA validly preempts state law and that it does not violate the anti-commandeering clause of the 10th Amendment because the ICWA applies evenhandedly to all actors within an ICWA matter, thereby ultimately holding that the ICWA is constitutional.

Safe Haven is a back door approach to ICWA and WICWA avoidance. Without being required to obtain the necessary information to identify and then confirm a child's status as an Indian child – it will and has resulted in Tribes not receiving notice that a child in need of protection or services or an involuntary termination of parental rights proceeding involving our children is occurring. The ICWA and the ICWA federal regulations set forth the minimum requirements for identification of Indian children and notice that we all must follow (unless our state ICWA provides greater protection), those being:

> 25 C.F.R. § 23.107 How should a State court determine if there is reason to know the child is an Indian child?
>
> (a) State courts must ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record. State courts must instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
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> (b) If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an "Indian child," the court must:

[9] 25 U.S.C. § 1902.
[10] 25 U.S.C. § 1921.
[11] *Haaland v. Brackeen*, 599 U.S. 255, 276–77 (2023).

(1) Confirm, by way of a report, declaration, or testimony included in the record that the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member (or eligible for membership), to verify whether the child is in fact a member (or a biological parent is a member and the child is eligible for membership); and
(2) Treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of an "Indian child" in this part.

25 C.F.R. § 23.11 Notice.
(a) In any involuntary proceeding in a State court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's parent or Indian custodian or Tribe is known, the party seeking the foster-care placement of, or termination of parental rights to, an Indian child must directly notify the parents, the Indian custodians, and the child's Tribe by registered or certified mail with return receipt requested, of the pending child-custody proceedings and their right of intervention.

25 U.S.C. § 1912
(a)Notice; time for commencement of proceedings; additional time for preparation
In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

Notice is one of the core elements of the ICWA. It is the first step towards promoting the stability and security of Indian tribes and families. It is what gets the Tribes in the courtroom door to seek transfer of the matter to tribal court or for the Tribes to at least intervene in the county court proceedings to advocate for their preferred tribal placement, among all their other ICWA rights. Therefore, it is absolutely crucial that the federal identification and notice provisions are followed to ensure the purpose of the ICWA is realized – children being safely maintained by their families (as defined by each Tribe as opposed to the nuclear definition of western society) and/or within their Tribal communities. Only then are an Indian child's and Tribe's best interests being supported.

Anonymity and Confidentiality in the ICWA Context

Wisconsin's current Safe Haven Law does have one peculiar, although necessary section, that pertains to Tribes. While not screaming out as an ICWA provision, it does tie in a bit to the full faith and credit requirement.[12] The Safe Haven tribal provision states:

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1m) shall keep that information confidential and may not disclose that information, except to the following persons:
…

[12] 25 U.S.C. § 1911(d); Wis. Stat. § 48.028(3)(f)(requiring the state give full faith and credit to judicial proceedings of any Indian tribe that are applicable in an ICWA proceeding).

> 7. A tribal court, or other adjudicative body authorized by an Indian tribe to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the Indian tribe in those proceedings, or an attorney representing the interests of the child in those proceedings.[13]

One must ask though, how can this information possibly be disclosed without asking the necessary questions needed to identify if the child is an Indian child? Without obtaining this information, you would have no way of knowing whether a Tribal Court has an open case pertaining to the child. There was clearly legislative intent that some level of tribal notification occurs, it simply does not rise to the level of the minimum federal standards required by the ICWA.

There is certainly an argument that the foundation of Safe Haven – anonymity – is what is needed to prevent infanticide. However, this is weak at best. And considerably weaker with the lack of <u>any hard data</u> to suggest that anonymity is indeed what is required to prevent infanticide. Most current literature instead speaks of how anonymity does not prevent infanticide- as people are still unsafely abandoning children- despite states having "Safe Haven Laws." Instead, the literature illustrates the role anonymity has in being more of a detriment to the adoptees than assistive. And in fact, there is no place that this becomes a larger detriment than in the hospital setting.

> These anonymity provisions are particularly vexing because a vast majority of abandoned newborns are abandoned at the hospital after birth even without any safe haven laws [citation omitted]. These infants do not seem to have been at risk of harm or death since they were left at sheltered places with attendants and medical care, and there is no indication that need for anonymity or fear of criminal prosecution prevents mothers who give birth in the hospital from leaving their newborns there. Yet the statutes, nearly all of which designate hospitals as safe havens [citation omitted], may now permit these hospital abandonments to be classified as safe haven relinquishments with the attendant anonymity and barriers to obtaining family and medical information that may be useful to the child and adoptive parents and, in the case of Native American children, the tribe. Thus the statutes potentially have injected anonymity onto tens of thousands of babies born, and abandoned, at hospitals each year [citation omitted].[14]

It is fully understood the difference between anonymity and confidentiality. When the tribes proffer that they have stringent confidentiality to be able to deal with membership eligibility checks or transfers of cases involving Safe Haven, it is not a misunderstanding of anonymity. Instead, it is to show that the intent of the Safe Haven Laws can still be achieved. Tribes can handle these actions in a manner that the parent(s) remain anonymous. And the federal government agrees with this sentiment. For example, the federal government included the following regulatory language for voluntary proceedings[15], which clearly sets forth its expectations for states and tribes when parents request anonymity:

> In seeking verification of the child's status in a voluntary proceeding where a consenting parent evidences, by written request or statement in the record, a desire for anonymity, the court must keep relevant documents pertaining to the inquiry required under this section confidential and under seal. ***A request for anonymity does not relieve the court, agency, or other party from any duty of compliance with ICWA, including the obligation to verify whether the child is an "Indian child."*** A Tribe receiving information related to this inquiry must keep documents and information confidential.[16]

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[13] Wis. Stat. § 48.195(2)(d)7.

[14] Annette R. Appell, *Safe Haven to Abandon Babies, Part III: The Effects*, ADOPTION QUARTERLY Vol. 6(2) 2002.

[15] This is for example, as ultimately the proceedings that ultimately occur after a relinquishment in Wisconsin are treated as an involuntary termination of parental rights. Wis. Stat. § 48.415(1m).

[16] 25 C.F.R. § 23.107(d)(emphasis added).

Tribes need basic information to verify eligibility of membership. We are more than capable of protecting this information during a relinquishment process to ensure a child is safe and healthy, while recognizing the desire of the parent(s) to be unknown publicly. This is particularly evidenced by Tribes that have adopted their own Safe Haven Laws.[17]

Importance of ICWA Adoptive Placement Preferences

One of the chief purposes of the ICWA is to ensure "the placement of [ ] children in foster or adoptive homes or institutions which will reflect the unique values of the Indian culture."[18] The ICWA's mandate that an adoptive placement is preferred to be with members of the child's extended family, other members of the same tribe, or other Indian families is "[t]he most important substantive requirement imposed on the state."[19] Further, the ICWA permits Tribes that desire to have a different, more culturally appropriate order of preferences to adopt such preferences to take the place of the standard placement scheme found in the ICWA.[20]

Placement preferences- particularly adoptive placement preferences -are crucial to the health and wellbeing of Native children. Children adopted out of their tribal communities are highly affected by this loss of connection- invoking trauma long after the adoption is finalized. In a study of Indian adoptees, disturbing information was discovered on just how deep the trauma can be for these children as they reach adolescence and adulthood. Dr. Carol Locust, of the Native American Research and Training Center at the University of Arizona College of Medicine, performed in-depth research on the disorder known as "Split Feather Syndrome."

> [Dr. Locust] identified unique factors of Indian children placed in non-Indian homes that created damaging effects in these children's lives. Locust found that: Native children placed in non-Native homes were at great risk for experiencing psychological trauma leading to long-term emotional and psychological problems as adults; that the same clusters of long-term psychological problems experienced by naive adult adoptees were recognizable as a syndrome; and 'split feather' syndrome appears to be related to a reciprocal-possessive form of belongingness unique to survivors of cultures subjected to annihilation.[21]

These children grow up, looking in the mirror, knowing that there is something "different" about them- something special. However, without their tribal community there to support them as they go through life, they are simply going through the motions. They lack the tribal connection and cultural leaders to guide them as they transition through these formative years. They lack the guidance as to how they are supposed to act as a male or female of their tribe. They lack the support in how to combat the feelings of loss and disconnectedness. A piece of them is missing. And a piece of the tribe is missing too.

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[17] *See e.g.*, Hoocak Nation Children and Family Act, 4 HCC § 3.97-104.
[18] H.R. Rep. No. 95-608, 95th Cong. 2nd Sess. 8 (1978); *see also* 25 U.S.C. § 1902.
[19] *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989).
[20] 25 U.S.C. § 1915(c).
[21] *ICWA from the Inside Out: 'Split Feather Syndrome,'* MINN. DEPT. OF HUMAN SERVS. (July 2005), *available at* http://www.dhs.state.mn.us/main/groups/children/documents/ pub/dhs16_180049.pdf. *See also* Georgia Deoudes, Evan B. Donaldson Adoption Institute, *Unintended Consequences: 'Safe Haven' Laws are Causing Problems, Not Solving Them,* http://adoptioninstitute.org/publications/unintended-consequences-safe-haven-laws-are-causing-problems-not-solving-them (finding this concept extends to all children, and not Indian children alone):

> Safe haven laws also ignore the psychosocial importance to adopted people, as children and later in life, of information about their origins, ethnicity and social backgrounds. The overwhelming majority of adoption practitioners and mental-health professionals today – including ones who do not necessarily embrace the rapidly growing practice of "open adoption" – agree about the benefits of having personal, as well as medical, information; moreover, they maintain that the lack of such information can undermine adoptive families, especially the children in them.

Later, in 2017, a group of researchers proceeded with a quantitative study of the mental health differences found within American Indian adoptee populations versus Non-Indian adoptee populations. While no difference was found between non-Indian (Caucasian) adoptees and American Indian adoptees on self-assessed depression or diagnosed depression, meaning adoptees in general experience depression, there were significant differences with regards to other areas of mental health.[22] American Indian adoptees were found to be more vulnerable to mental health problems within the whole adoption system generally.[23] Specifically, American Indian adoptees were more likely to report alcohol addiction, alcohol recovery, drug addiction, drug recovery, self-assessed eating disorder, eating disorder diagnosis, self-injury, suicidal ideation, and suicide attempts.[24] The study highlights that historical trauma is inherited through one's ancestors, as such American Indian "adoptees experience trauma through their lived experiences of being separated from their families and culture, a phenomenon referred to as "blood memory.""[25]

Circling back, to get to the point where a Tribe is offering placement suggestions that will help prevent these adverse health outcomes, a Tribe must first receive notice of the proceeding. All of the enhanced protections - that are simply best practice/gold standard child welfare practice – they all do not get triggered until that notice is received. And that notice must provide enough information for the Tribe to identify whether the child is a member or eligible for membership in the Tribe.

Unintended Outcomes

By continuing to allow state Safe Haven to conflict with federal ICWA, the state is allowing our children to continue to be displaced from our Tribal communities without our knowledge or input. As mentioned in the opening, Tribes have been raising this concern since 2012. For the first three days of every one of our children's lives, since 2012, the state was sanctioning the ability for those children to be potentially lost to us, and us lost to them forever. However, if the window of time for relinquishment is extended to thirty days, it will also extend the opportunity of ICWA avoidance for that many more days – resulting in greater opportunity for ICWA avoidance than has already been allowed to occur in violation of federal law up to this point.

Additional unintended consequences include the failure to protect a non-relinquishing parent's rights when they are not made aware of the relinquishment. This practice particularly disfavors unwed fathers. These individuals are already at a disadvantage in the current statutory framework established for unwed fathers. The law offers a process, but it requires them to jump through additional hoops involving a virtually unknown process of filing a declaration of paternal interest before the birth, within 14 days of the birth, or within 21 days of the receipt of a notice associated with a termination of parental rights.[26] The latter of course is only triggered if they are noticed, but they would not be unless a mother voluntarily chooses to share basic information with the Department. This is harmful to fathers that were purposefully prevented from knowing a child was conceived and given birth to. It is not in the child's best interests because they were prevented from being able to establish a relationship with their father under these circumstances. However, the harm is compounded when the father is Native. This is because the father is prevented from bestowing cultural knowledge on the child or assisting the child in accessing their whole traditional kinship and clan system.

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[22] Ashley L. Landers, PhD et al., *American Indian and white Adoptees: Are there Mental Health Differences?* AMERICAN INDIAN AND ALASKA NATIVE MENTAL HEALTH RESEARCH (2017) at 69.
[23] *Id*.
[24] *Id*.
[25] *Id*. at 70.
[26] Wis. Stat. § 48.025.

Safe Haven's Misplaced Focus

Efforts to curb infant homicide are no doubt important. In 2020, the Centers for Disease Control and Prevention researched infant homicide and Safe Haven Laws from 2008 through 2017. There has been a 66.7% decline in infant homicide on the day of birth from the period of 1989-1998 to the period of 2008-2017.[27] Statistically, the highest rate of infant homicide still occurs during an infant's first 24 hours of life. Of the 111 infant homicides identified as occurring in the first week of life, 73% occurred within the first 24 hours of life.[28] Ultimately, the study was unable to find a correlation between infant homicide rates and Safe Haven age limits, as seen in their chart[29] below:

TABLE 2. Number,* percentage,† and rate§ of homicides among infants (N = 2,849), by state¶ and corresponding Safe Haven Law age limit category — restricted-use National Vital Statistics System linked birth and infant death data, United States, 2008–2017.

State/Area where homicide occurred	Safe Haven Law age limit	No. (%) of homicides†	Rate per 100,000 person-years (95% CI)§
Alabama, Arizona, California, Colorado, Hawaii, Michigan, Mississippi, Tennessee, Utah, Washington, Wisconsin	**3 days**	**738 (25.9)**	**6.3 (5.8–6.7)**
Florida, Georgia, Massachusetts, Minnesota, New Hampshire, North Carolina, Oklahoma	7 days	478 (16.8)	7.0 (6.4–7.6)
Maryland	10 days	54 (1.9)	7.7 (5.7–10.0)
Delaware, District of Columbia, Iowa, Virginia, Wyoming	14 days	162 (5.7)	9.4 (8.0–10.9)
Alaska	21 days	—	—
Arkansas, Connecticut, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia	30 days	923 (32.4)	7.4 (6.9–7.8)
Kansas, Missouri	45 days	124 (4.4)	10.6 (8.7–12.4)
South Carolina, South Dakota, Texas	60 days	335 (11.8)	7.3 (6.5–8.0)
New Mexico	90 days	22 (0.8)	8.6 (5.4–13.0)
North Dakota	<1 year	—	—

A number of factors appear to lead to infant homicide – including poverty (inadequate resources for childcare, housing, and food), decreased education levels, lack of prenatal care, lack of parenting skills due to young age, and lack of supports due to being single parent. From a public health practice standpoint, it was the CDC's belief that focus needed to be paid towards those factors and addressed through prevention.

> Although infants make up a small percentage of homicide victims, these deaths are preventable. Programs and policies that strengthen economic supports for families, provide quality and affordable childcare, develop parenting skills (e.g., through home visiting programs), assure safe, stable, nurturing relationships and environments for all infants (10), and increase the public's awareness of Safe Haven Laws might contribute to preventing infant homicides.[30]

Safe Haven alone is not the answer – there must be affordable childcare, parenting programs, education, job training, post-natal care, adequate behavioral health care, and other programs that help families grow stronger.

How to Move Forward

The obvious suggestion is that the entire Safe Haven Law be amended to fully comply with the federal ICWA. This would alleviate any worries for the state regarding federal preemption

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[27] Rebecca F. Wilson, PhD, et al., "Infant Homicides Within the Context of Safe Haven Laws – United States, 2008-2017," Vol. 69 CENTERS FOR DISEASE CONTROL AND PREVENTION MORBIDTY AND MORTALITY WEEKLY REPORT No. 39, p. 1389 (Oct. 2, 2020).
[28] *Id*. at 1388.
[29] *Id*. at 1389.
[30] *Id*. at 1389-1390.

arguments being made in future lawsuits. It also provides Tribal children and Tribes the greatest protection – the protection they are afforded under federal law. In the alternative, there are several examples from states where great concessions were made, knowing unintended negative consequences are bound to present themselves. Most recently, Wyoming passed legislation that attempted to offer some ICWA protections. New Mexico, Montana, and South Dakota also offer potential models to look at. Additionally, there are numerous drafts that have been done since 2012, that can be recirculated for conversation.

Effective: July 1, 2024
Wyoming Statutes § 14-11-103. Relinquishment of a newborn child
(a) A parent or a parent's designee may relinquish a newborn child to a safe haven provider in accordance with the provisions of this act and retain complete anonymity.
(b) Relinquishment of a newborn child shall not, in and of itself, constitute abuse or neglect and the child shall not be considered an abused or neglected child, so long as the relinquishment is carried out in substantial compliance with provisions of this act.
(c) A safe haven provider shall accept a newborn child who is relinquished pursuant to the provisions of this act, and may presume that the person relinquishing is the child's parent or parent's designee.
(d) The parent or parent's designee may provide information regarding the parent and newborn child's medical histories, and identifying information regarding the nonrelinquishing parent of the child. ***The safe haven provider shall, after informing the parent or the parent's designee that no information is required to be given, ask the parent or the parent's designee whether the child has any tribal affiliation or Native American ancestry, and request relevant information to determine the child's tribe.*** The safe haven provider shall not require that any information be given or the person relinquishing express an intent for return of the child.
(e) A safe haven provider may provide any necessary emergency medical care to the newborn child and shall deliver custody of the newborn child to the nearest hospital as soon as possible.
(f) A hospital receiving a relinquished newborn child may provide any necessary medical care to the child and shall notify the local child protective agency as soon as possible, but no later than twenty-four (24) hours after receiving the child.
(g) The local child protective agency shall assume care and custody of the child immediately upon notice from the hospital. After receiving custody, the local child protective agency shall assist in placement of the newborn child pursuant to W.S. 14-11-105(a).

Wyoming Statutes § 14-11-105. Child placement; termination of parental rights
(a) The department of family services shall immediately place or contract for placement of the newborn child in a potential adoptive home.
(b) If neither parent of the newborn child affirmatively seeks the return of the child within three (3) months after the date of delivery to a safe haven provider, the department of family services shall file a petition for the termination of the parent-child legal relationship in accordance with W.S. 14-2-308.
(c) Prior to filing a petition for termination, the department of family services shall conduct a search of the putative father registry for unmarried biological fathers and if the putative father is identified, the petition shall be served pursuant to W.S. 14-2-313.
(d) If the child is an Indian child as defined by W.S. 14-6-702(a)(iv), the court and all parties shall comply with the Wyoming Indian Child Welfare Act and the department shall serve the petition as required by W.S. 14-6-704.

Effective: June 14, 2013
New Mexico Statutes § 24-22-1.1. Purpose
The purpose of the Safe Haven for Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, ninety days of age or less, at a safe haven site. ***This act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents.***

New Mexico Statutes § 24-22-4. Safe haven site procedures
A. A safe haven site shall accept an infant who is left at the safe haven site in accordance with the provisions of the Safe Haven for Infants Act.
B. In conjunction with the children, youth and families department, a safe haven site shall develop procedures for appropriate staff to accept and provide necessary medical services to an infant left at the safe haven site and to the person leaving the infant at the safe haven site, if necessary.
C. Upon receiving an infant who is left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act, the safe haven site may provide the person leaving the infant with:
(1) information about adoption services, including the availability of private adoption services;
(2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and
(3) written information regarding whom to contact at the children, youth and families department if the parent decides to seek reunification with the infant.
D. A safe haven site shall ask the person leaving the infant whether the infant has a parent who is either a member of an Indian tribe or is eligible for membership in an Indian tribe, but the person leaving the infant is not required to provide that information to the safe haven site.
E. Immediately after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a safe haven site shall inform the children, youth and families department that the infant has been left at the safe haven site. The safe haven site shall provide the children, youth and families department with all available information regarding the child and the parents, including the identity of the child and the parents, the location of the parents and the child's medical records.

New Mexico Statutes § 24-22-5. Responsibilities of the children, youth and families department
Currentness
A. The children, youth and families department shall be deemed to have emergency custody of an infant who has been left at a safe haven site according to the provisions of the Safe Haven for Infants Act.
B. Upon receiving a report of an infant left at a safe haven site pursuant to the provisions of the Safe Haven for Infants Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act [Chapter 32A, Article 4 NMSA 1978].1
C. When an infant is taken into custody by the children, youth and families department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child:
(1) the child's tribe shall be notified as required by Section 32A-1-14 NMSA 1978 and the federal Indian Child Welfare Act of 1978; and
(2) pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of Section 32A-5-5 NMSA 1978 regarding Indian child placement preferences.

D. The children, youth and families department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and distributing it to safe haven sites.
E. An infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services.

Effective: July 1, 2025
Montana Statutes 40-6-405. Surrender of newborn to emergency services provider--temporary protective custody
(1) If a parent surrenders an infant who may be a newborn to an emergency services provider, the emergency services provider shall comply with the requirements of this section under the assumption that the infant is a newborn. The emergency services provider shall, without a court order, immediately accept the newborn, taking the newborn into temporary protective custody, and shall take action necessary to protect the physical health and safety of the newborn.
(2) If a newborn is surrendered face to face, the emergency services provider shall make a reasonable effort to do all of the following:
(a) if possible, inform the parent that the parent may remain anonymous;
(b) if possible, inform the parent that by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption according to law;
(c) if possible, inform the parent that the parent has 60 days to petition the court to regain custody of the newborn;
(d) if possible, ascertain whether the newborn has a tribal affiliation and, if so, ascertain relevant information pertaining to any Indian heritage of the newborn;
(e) provide the parent with written material approved by or produced by the department, which includes but is not limited to all of the following statements:
(i) by surrendering the newborn, the parent is releasing the newborn to the department to be placed for adoption and the department shall initiate court proceedings according to law to place the newborn for adoption, including proceedings to terminate parental rights;
(ii) the parent has 60 days after surrendering the newborn to petition the court to regain custody of the newborn;
(iii) the parent may not receive personal notice of the court proceedings begun by the department;
(iv) information that the parent provides to an emergency services provider will not be made public;
(v) a parent may contact the department for more information and counseling; and
(vi) any Indian heritage of the newborn brings the newborn within the jurisdiction of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq.
(3) If a newborn is surrendered face to face, after providing a parent with the information described in subsection (2), if possible, an emergency services provider shall make a reasonable effort to:
(a) encourage the parent to provide any relevant family or medical information, including information regarding any tribal affiliation;
(b) provide the parent with information that the parent may receive counseling or medical attention;
(c) inform the parent that information that the parent provides will not be made public;
(d) ask the parent for the parent's name;
(e) inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and to obtain relevant medical family history and then ask the parent to identify the other parent;
(f) inform the parent that the department can provide confidential services to the parent; and

(g) inform the parent that the parent may sign a relinquishment for the newborn to be used at a hearing to terminate parental rights.
(4) If a newborn is surrendered in a newborn safety device, the emergency services provider shall make a reasonable effort to provide the parent with the written material described in subsection (2)(e).

South Dakota[31] Statutes 25-5A-36. Due regard to be afforded Indian Child Welfare Act.
Due regard shall be afforded to the Indian Child Welfare Act (25 U.S.C. §§ 1901-1963), as amended to January 1, 2004, if that Act is applicable.

Conclusion

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 have the opportunity to learn about their Indian heritage and be connected with their Tribal communities. We- Wisconsin and Tribes- must work together to find a fix before we lose any more of our Tribal children and before our Tribal children lose us. Great things happen when we work together- just look at WICWA.

We extend our invitation to work with the State Legislature towards amendments to bring this law into compliance with federal law. Thank you for your time.

Respectfully Submitted,

Lac Courte Oreilles Band of Lake
Superior Chippewa Indians
Tribal Governing Board

Drafted by & Contact for Questions:
Nicole M. Homer (Yakona·Take)
Assistant Attorney General
Lac Courte Oreilles Band of Lake Superior Chippewa Indians
13394 W Trepania Road
Hayward, WI 54843
(715) 558-7907 (O)
(715) 699-5311 (C)
nicole.homer@lco-nsn.gov

[31] The South Dakota Department of Social Services' Safe Havens page (found at https://dss.sd.gov /childprotection/safehaven.aspx) states: "The Indian Child Welfare Act must be followed if applicable." While the provision within the statute would appear on the surface to be helpful, the lack of any ICWA specific statutory language in the sections addressing when the child is actually delivered to custody is a less desirable path forward.