



The State of Wisconsin



STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS



**POLICY REGARDING
CONSULTATION
WITH
AMERICAN INDIAN TRIBAL NATIONS
IN WISCONSIN**



Kevin A Carr

Secretary Kevin Carr

Tony Evers

Governor Tony Evers

December 2021

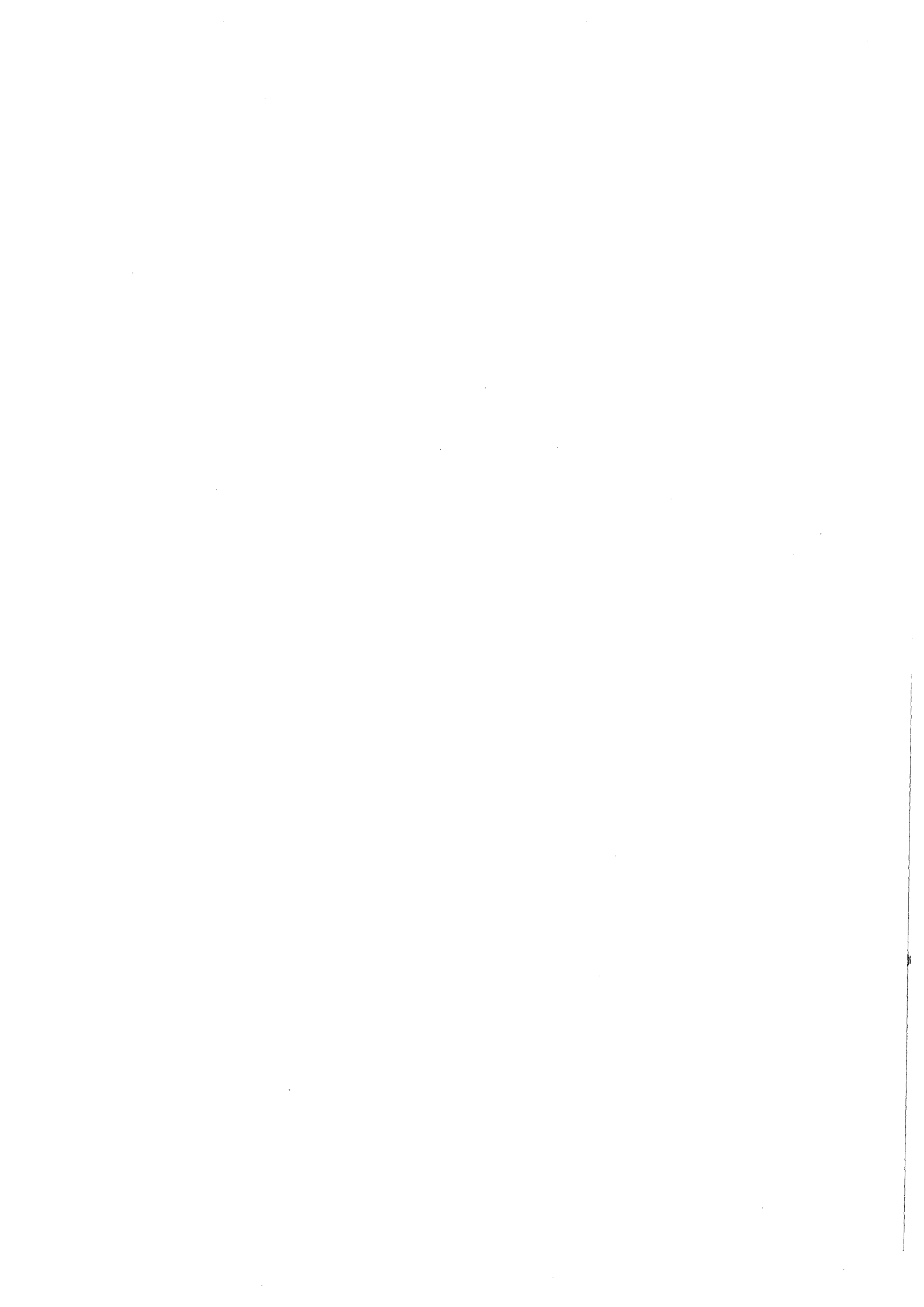


Table of Contents

- I. Introduction..... 2
- II. Objectives 4
- III. Guiding Principles 4
- IV. Methods..... 5
 - A. Tribal Liaison5
 - B. Consultation Meetings.....5
 - C. Outreach to Tribal Governments6
 - D. Annual Workplan and Other Documents6
 - E. Resolution of Issues.....6
 - F. Education.....6
- V. Resources 7
- VI. Policy Implementation 7

I. Introduction

Each state has a unique, legal relationship with sovereign American Indian Tribal governments, as affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties, statutes, laws, and court decisions.

Executive Order #39, issued in 2004 by Governor Doyle, recognized the government-to-government relationship between the state of Wisconsin and the federally recognized American Indian Tribal governments located within the state of Wisconsin. Wisconsin Executive Order #18, issued in April 2019 by Governor Evers, reaffirms that Tribal Nations have sovereign authority over their members and territories, recognizes the unique government-to-government relationship between the state and Tribal governments, and renews the state's commitment to work collaboratively in partnership with Tribal Nations.

Each of the federally recognized sovereign Tribal Nations in the state of Wisconsin is recognized by the state for its unique status and its right to self-government and self-determination. The state further recognizes that no Tribe can speak for or act on behalf of another. Department of Corrections respects the fundamental principles that establish and maintain the relationship between Tribes and the agency and accord Tribal governments the same respect accorded to other governments as the Tribes are respective, governmental entities rather than a racial or ethnic group.

Government-to-government relations involve respectful and cooperative communication and dealings designed to implement programs in a collaborative manner and achieve consensus—and to the extent possible—before a decision is made or an action is taken. The state of Wisconsin and the Department of Corrections (DOC) are committed to such government-to-government relations with the federally recognized Tribal governments of Wisconsin (Tribes). The state will employ its best, intentional efforts to achieve positive outcomes from its consultation and collaboration, which is essential for productive, safe, sustainable, and wise decision-making and policy implementation.

DOC is a comprehensive state agency, headed by a cabinet-level secretary, which has responsibility for formulating departmental policies and supervising the implementation of duties assigned to the department under the Wisconsin Statutes. The secretary also works closely with the Governor and all Executive Branch agencies to develop and implement statewide goals, especially in the areas of financial and program management. Additionally, the Department of Administration has established a state-Tribal Relations Initiative within the Division of Intergovernmental Relations to ensure that all Executive Branch agencies carry out their duties pursuant to the tenets of Wisconsin Executive Order #18 and to serve as a facilitator between the Executive Branch and Tribal governments. Each Executive Branch agency has established at least one Tribal Liaison who has been identified to serve as a liaison between the agency and the Tribal Nations.



EXECUTIVE ORDER #18

Relating to an Affirmation of the Intergovernmental Relationships Among the State of Wisconsin and Tribal Nations Located Within the State

WHEREAS, the State of Wisconsin reaffirms that Tribal Nations have sovereign authority over their members and territory;

WHEREAS, treaties, rulings from the Supreme Court of the United States, as well as federal and state laws have established a unique legal relationship between states and Tribal Nations;

WHEREAS, there are eleven federally-recognized Tribal Nations within the State of Wisconsin;

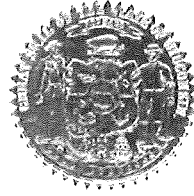
WHEREAS, state policies, regulations, and decisions impact Tribal Nations both directly and indirectly; and

WHEREAS, the State of Wisconsin and Tribal Governments both serve our citizens, and close collaboration is essential for productive, safe, sustainable, and wise decision making and policy implementation.


NOW, THEREFORE, I, TONY EVERS, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the Laws of the State, hereby order each cabinet agency to:

1. Recognize the State of Wisconsin's unique legal relationship with Tribal Nations and engage them with the respect accorded to other governments.
2. Engage Tribal Governments, on a government to government basis, in developing policies or programs that directly impact Tribal Nations or their members, and appropriately consult Tribal Governments on matters that may indirectly impact Tribal Nations or their members.
3. Develop an updated consultation policy that does the following:
 - a. Ensures the state government workforce is educated on Tribal Nations and sovereignty;
 - b. Strengthens the day-to-day working relationships between Tribal and state government agencies;
 - c. Provides for at least annual consultation meetings with Tribal and state leaders; and
 - d. Identifies at least one agency staff member to serve as a liaison between the agency and the Tribal Nations.

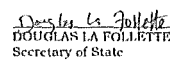
4. Ensure Impacted Tribal Governments and interests are represented and respected when managing federal programs.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great seal of the State of Wisconsin to be affixed. Done at the Executive Residence in the City of Madison this ninth Day of April in the year of two thousand nineteen.


TONY EVERS
Governor

By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

This policy serves as a mechanism designed to help improve the planning and delivery of state services to Tribal governments, Tribal communities, and Tribal citizens. Whether the services are provided through Tribal agencies or directly through DOC or county agencies, it is critical that the department administrators and Tribal leadership and their representatives consult with one another to assure that needed services are provided and received in a manner that is both efficient and effective.

This agreement serves as recognition that there is tremendous potential for DOC and Tribes to work collaboratively for the benefit of both governments. Both state and Tribal governments share the goal of providing services to their people in the most cost-effective manner practicable and to ensure the prosperity, health, and well-being of their people through their work and public service. The agency possesses a tremendous amount of experience in streamlining and economizing the provision of state government services. The agency believes that there is great value to both the state of Wisconsin and Tribal governments in sharing this expertise to the greatest extent possible, while at the same time valuing the Tribes' knowledge and practices and opportunities to build on these assets where possible. As residents of the state of Wisconsin, Tribal citizens are equally entitled to those services afforded to all residents of the state. As citizens of a sovereign Tribal nation, Tribal citizens are entitled to those services afforded to all citizens of that Tribal Nation.

Additionally, this policy also sets forth principles and a process for government-to-government consultation on services, policies, and programs in Wisconsin. The intent of this policy is to serve as a framework to strengthen day-to-day working relationships between Tribal and state government agencies, improve government-to-government communications, and promote the participation and inclusion of Tribal Nations and Tribal perspectives in the work of state cabinet agencies.

II. Objectives

The objectives of this policy are:

- To create a consistent, collaborative effort, foster relationships, and improve the structure through which the Executive Branch of the state of Wisconsin and Tribal governments communicate on matters of shared concern. This includes communication of potential program and policy changes being considered, including potential legislative or administrative measures.
- To formalize the process and expectations for DOC to implement a government-to-government relationship and to seek consultation with and participation of representatives of Tribal governments in policy development and program activities on at least an annual basis.
- To promote practices that engage Tribal Governments, on a government-to-government basis, in developing policies or programs that directly impact Tribal Nations or their members, and appropriately consult Tribal Governments on matters that may indirectly impact Tribal Nations or their members.
- To promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their representatives in the DOC decision-making process.
- To educate the state government workforce on Tribal Nations and sovereignty so workers can integrate Indigenous peoples' issues into normative and operational areas of work to support enabling environments to foster inclusion of Indigenous peoples in the design, execution, and evaluation of policies and programs that concern or affect them.

III. Guiding Principles

DOC is committed to improving and maintaining effective government-to-government relations with the Tribes. Developing mutual understanding, with cultural awareness and sensitivity, is necessary for effective consultation on policy and collaboration on program operations. To this end, «agency acronym» shall utilize the following principles in consulting on policy and on program issues with Tribal governments. Integration of these principles into agency planning and management activities will help produce positive and desired outcomes for both state and Tribal community members.

- It is important to recognize the uniqueness of each Tribe's culture, governmental structure and processes, demographics and geography (i.e., where Tribal members are located), and other factors.
- Tribal Nations have the right to choose their own representatives, in accordance with their own procedures, to participate in decision-making in matters which would affect their rights and interests.
- Consultation involves respectful and timely communication with Tribal governments in a cooperative process that strives to achieve a consensus before a decision is made or an action is taken to the extent permitted by law.
- Working directly with Tribes in a government-to-government manner will result in an effective, efficient, and sustainable consultation process.
- Consultation with Tribal governments when developing and implementing budgets, policies and programs, legislative initiatives, regulations, and other activities that are anticipated to directly affect

Tribes or their citizens is necessary and respectful. This includes issues presented by the Tribes on which they would like consultation.

- Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

IV. Methods

The state of Wisconsin, represented for purposes of this policy by DOC with the concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process for communicating general concerns, program and funding priorities, respective roles in the provision of services to Tribal community members, and other high-level matters of mutual concern.

DOC, in consultation with the federally recognized Tribal governments in Wisconsin, establishes this policy requiring consultation by and between these governments on DOC policies and activities.

A. Tribal Liaison

The Secretary of DOC shall identify at least one agency staff member as Tribal Liaison, to serve as a liaison between the agency and the Tribal Nations. Tribal Liaisons shall:

- Foster open communications and a good working relationship with their liaison areas.
- Act as a communication agent and/or act to facilitate the transfer of information between the agency and the tribe.
- Present information, concerns, and questions from DOC to the tribe and the tribe to the agency in a timely manner in order to allow the greatest possible opportunity to resolve concerns.
- Address questions by DOC or the tribe.

B. Consultation Meetings

The Secretary of DOC shall assume the responsibility for scheduling, in consultation with Tribal leadership, an annual consultation session at which the Secretary will be present, which must include invitations to, at a minimum, the following individuals or their designee:

- Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- President, Ho-Chunk Nation
- Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- Chairperson, Menominee Indian Tribe of Wisconsin
- Chairperson, Oneida Nation of Wisconsin
- Chairperson, Forest County Potawatomi Community
- Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- Chairperson, Sokaogon Chippewa Community
- Chairperson, St. Croix Chippewa Indians of Wisconsin
- President, Stockbridge-Munsee Band of Mohican Indians
- The Secretary of the DOC

The agenda, date, and location of the consultation session shall be determined jointly by the secretary and Tribal chairpersons and presidents. The schedule will allow adequate time during even-numbered years for Tribes to provide input into biennial budget initiatives.

Tribes are encouraged to communicate with DOC regularly on areas of concern. They are urged to not wait until the annual meeting to bring meeting topics up. In addition, any Tribal Chairperson or President may request meetings or other consultation with the secretary or other agency representatives.

C. Outreach to Tribal Governments

The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it is often necessary for DOC to establish committees, councils, workgroups, or similar bodies to provide advice and recommendations to the agency. Such committees, councils, workgroups or similar bodies, when dealing with policies or programs affecting Tribal governments, shall inform Tribal Chairs/Presidents, in writing, of the proposed policy or program in order to solicit Tribal input.

D. Annual Workplan and Other Documents

Each agency shall create the following documents or provide links to documents that contain the needed updated information in advance of each annual consultation and upon Tribal request:

- Organization Chart: Chart showing the structure of the agency.
- Programs: A list of programs and services available to Tribes, including an overview listed by agency division/bureau/section, with staff listing, contact information, and summary.
- Boards/Commissions: A list of boards/commissions attached to the agency with a short description of each board/commission and its membership.
- Workplan: Includes issues identified at consultation with a plan to address the problems for each issue, including staff member in charge, others identified as subject matter experts, a progress column, and a proposed steps column. The three previous years' workplans should also be included once available.

E. Resolution of Issues

Throughout any given year, specific issues arise affecting one or more Tribes and DOC. These issues may be raised by either a Tribe or «agency acronym» and may occur at various levels within either party. When an issue arises to the level requiring involvement by Tribal leadership and/or DOC Office of the Secretary, staff should document the issue and pertinent information for tribal and agency leadership. Leadership of all parties should then discuss the issue and attempt to resolve it in a timely manner. Tribal and state agency leadership should mutually agree and acknowledge that an issue is resolved or otherwise concluded. The Tribal Chair/President and the DOC Secretary should be kept informed of the situation in writing after each discussion. Within the agency, the Tribal Liaison will facilitate contact with the Secretary's office. Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties will determine if a process can be established for resolving the issue. It is recognized that some issues may not be able to be resolved to the satisfaction of all parties.

F. Education

All state workers must do their part to recognize and respect Tribal Nations and incorporate the inclusion of Tribal governments, Tribal communities, and Tribal members throughout the agency's work and public service. It shall be part of consultation agendas to discuss the agency's training efforts for appropriate workers and other individuals. The purpose of the training is to educate agency workers regarding the requirements of a meaningful government-to-government relationship, including historical and cultural perspectives from the Tribes, and information about the importance of consensus-building, Tribal sovereignty, Tribal government, and Tribal service delivery systems.

V. Resources

Wisconsin State-Tribal Relations Initiative Website

<http://witribes.wi.gov>

- *Tribes of Wisconsin* reference book
- Individual Tribal profiles
- Tribal Head Officials contacts list
- State-Tribal Liaison contacts list

United Nations Policies On Indigenous Peoples

<https://en.unesco.org/indigenous-peoples/un-policies>

- Each agency is encouraged to familiarize themselves with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) and other United Nations policies on Indigenous peoples to better understand how other governmental bodies are engaging with sovereign nations.

VI. Policy Implementation

This policy will apply to the following agencies and offices:

- Department of Administration
- Department of Natural Resources
- Department of Children and Families
- Department of Workforce Development
- Department of Tourism
- Department of Financial Institutions
- Department of Safety and Professional Services
- Department of Health Services
- Department of Revenue
- Department of Agriculture, Trade, and Consumer Protection
- Department of Corrections
- Department of Veterans Affairs
- Department of Military Affairs
- Wisconsin Housing and Economic Development Authority
- Wisconsin Economic Development Corporation
- Public Service Commission
- Office of the Commissioner of Insurance
- The Department of Transportation if it ceases its current consultation process

Nothing in this policy should be construed by an agency to encourage or require actions that would contradict or run afoul of state or federal law, including but not limited to Wisconsin's open meeting laws or laws related to obligations and restrictions in contested hearings.

