

STATE OF WISCONSIN
OFFICE OF JUSTICE ASSISTANCE

POLICY REGARDING
CONSULTATION
WITH
WISCONSIN'S INDIAN TRIBES

A handwritten signature in black ink, appearing to read "Jim Doyle", written over a horizontal line.

Governor Jim Doyle

A handwritten signature in black ink, appearing to read "David Steingraber", written over a horizontal line.

Executive Director David Steingraber

June 28, 2005

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35 1. **Introduction**

36
37 The various states have a unique legal relationship with each sovereign American Indian Tribal government, as
38 affirmed and described in federal law. This relationship is set forth in the Constitution of the United States, treaties,
39 statutes, laws and court decisions. Wisconsin Executive Order #39, issued in February 2004, affirms the
40 government-to-government relationship between the State of Wisconsin and each American Indian Tribal
41 government located within the State of Wisconsin.

42
43 Government-to-government relations involve respectful and cooperative communication and dealings that are
44 designed to achieve a consensus, to the extent possible, before a decision is made or an action is taken, and to
45 implement programs in a collaborative manner. The Wisconsin Office of Justice Assistance (OJA) is committed to
46 such government-to-government relations with the federally recognized Tribal governments of Wisconsin (Tribes).
47 The State will employ its best efforts to achieve positive outcomes from its consultation and collaboration. The
48 intent of this policy is to improve the inclusion of Tribal governments, Tribal communities and Tribal people in the
49 Homeland Security and criminal justice planning and activities of OJA, including grant administration, statistical
50 collection and data analysis, and information sharing and interoperability development initiatives by developing
51 principles and a process for consultation on homeland security and criminal justice issues in Wisconsin. It is for this
52 purpose that this policy has been developed.

53
54 The Office of Justice Assistance is an independent state agency, headed by a director appointed by the Governor,
55 and attached to the Department of Administration for administrative purposes. OJA has responsibility for
56 developing statewide plans and policies for the distribution of federal grant funds related to public safety, including
57 homeland security and criminal justice, programs. OJA serves as the State Administering Agency (SAA) for several
58 major federal programs including the Homeland Security Program, Justice Assistance Grant Program, Juvenile
59 Justice and Delinquency Prevention Act program, Violence Against Women Act (VAWA), Grants to Encourage
60 Arrest grant program and numerous smaller state and federal grants. OJA currently manages grants to improve law
61 enforcement in counties with Tribal lands.

62
63 Program areas include first responder capacity enhancement, drug task forces, gang reduction activities, juvenile
64 delinquency prevention and juvenile accountability, disproportionate minority contact, violence against women and
65 domestic violence response, justice information sharing, training of first responder and criminal justice
66 professionals, crime reporting and data analysis and public safety radio interoperability. All of these programs are
67 available for Tribal government and Tribal community participation through competitive funding processes or
68 specific federal program set asides. In addition, Tribal governments often are eligible to apply directly to the U.S.
69 Department of Justice for grants awarded by the federal government.

70
71 Each of the federally recognized sovereign Tribes in the State of Wisconsin is recognized by the State for its unique
72 status and its right to self-government and self-determination. OJA respects the fundamental principles that
73 establish and maintain the relationship between the Tribes and OJA and accord Tribal governments the same respect
74 accorded to other governments.

75
76 OJA and Tribal governments have a history of cooperation and collaboration. Both OJA and its predecessor agency,
77 the Wisconsin Council on Criminal Justice, have involved Tribal governments and programs in grant opportunities,
78 crime reporting programs and other agency activities. Tribal people have been appointed to committees and
79 advisory groups, and Tribal agencies, particularly law enforcement and judicial organizations, are considered valued
80 partners. With the transfer of the Homeland Security program to OJA in 2003, OJA has worked with the Great
81 Lakes Inter-Tribal Council (GLITC) to ensure Tribal governments receive funds to increase the capacity of Tribal
82 first responders to protect Tribal lands and people. However, the nature and consistency of that cooperation and
83 collaboration can and should be improved. The purpose of this consultation policy is to support that goal.

84
85 Both OJA and the Tribes have a responsibility for building safer communities through improving criminal justice
86 and homeland security systems. As residents of the State of Wisconsin, Tribal members are equally entitled to those
87 resources made available to all residents of the State. Whether criminal justice or homeland security systems are
88 supported through OJA administered funds, Tribal agencies or county agencies, it is critical that OJA and Tribal
89 leadership and their representatives consult with one another to assure that resources are provided and received in a
90 manner that is both efficient and effective.

91
92 **2. Objectives**
93

94 The objectives of this policy are to:

- 95
96 A. Create a collaborative relationship to include Tribal governments more extensively in OJA activities including:
97
98 o statewide criminal justice and Homeland Security planning initiatives;
99 o competitive grant opportunities;
100 o data collection and analysis programs;
101 o training on homeland security and justice system issues;
102 o information sharing, interoperability and other technology-related projects; and,
103 o broad-based efforts to address justice and homeland security system improvement issues.
104
105 B. Formalize the process and expectations for OJA to implement a government-to-government relationship and
106 seek consultation with and participation of representatives of Tribal governments in policy development and
107 program activities.
108
109 C. Promote and develop methods of obtaining consultation on issues from Tribal governments and to involve their
110 representatives in the OJA decision-making process.

111
112 **3. Guiding Principles**
113

114 OJA is committed to improving and maintaining effective government-to-government relations with the Tribes. The
115 development of mutual understanding, with cultural awareness and sensitivity, is necessary to effective consultation
116 on policy and collaboration on program activities. Toward achieving this goal, OJA will use the following
117 principles in consulting on policy and on program issues with Tribal governments. Integration of these principles
118 into OJA planning and management activities will help produce positive and desired outcomes in criminal justice
119 and homeland security services for Tribal community members.

- 120
121 A. In consulting with Tribal governments, it is important to recognize the uniqueness of each Tribe's culture,
122 governmental structure and processes, demographics and geography (i.e., where Tribal members are located),
123 and other factors.
124
125 B. Consultation involves respectful and timely communication with Tribal governments in a cooperative process
126 that strives to achieve a consensus before a decision is made or an action is taken.
127
128 C. Working directly with American Indian Tribes in a government-to-government manner will result in an
129 effective, efficient, and sustainable consultation process.
130
131 D. Consultation with Tribal governments when developing and implementing statewide plans, strategies, budgets,
132 policies and programs, legislative initiatives, regulations, and other activities that are anticipated to affect
133 American Indian Tribes or their members is necessary and respectful. This includes recognition of issues
134 presented by the Tribes on which they would like consultation.
135
136 E. Promotion of cooperation among affected parties is the best way to resolve issues of mutual concern.

137
138 **4. Purpose and Methods**
139

140 The State of Wisconsin, represented for purposes of this policy by the Office of Justice Assistance, with the
141 concurrence of the Tribes as sovereign nations, will diligently seek to maintain an ongoing and meaningful process
142 for communicating general concerns and program and funding priorities and other high-level matters of mutual
143 concern.
144

145 OJA, together with the Wisconsin federally recognized Tribal governments, establishes this policy requiring
146 consultation by and between these governments on OJA policies and activities. This policy formalizes the
147 collaborative relationship OJA and Tribal governments have established in making federal criminal justice, and
148 more recently homeland security program funds, available to Tribal governments on behalf of American Indians in
149 Wisconsin and provides a mechanism for coordinating with Tribal governments in the collection, analysis and
150 reporting of crime statistics; sharing of criminal justice information; and planning for statewide public safety radio
151 interoperability.

152
153 *A. Northern Summit*

154
155 The OJA Executive Director (ED) shall convene a Northern Summit to meet and confer with tribal leaders. The
156 summit will be held on a regular basis with the location rotating among sites convenient to tribal participants.
157 Invitations will be issued, at a minimum, to the following individuals who may designate another individual with
158 appropriate authority to attend:

- 159 • Chairperson, Bad River Band of Lake Superior Tribe of Chippewa Indians
- 160 • President, Ho-Chunk Nation
- 161 • Chairperson, Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- 162 • President, Lac du Flambeau Band of Lake Superior Chippewa Indians
- 163 • Chairperson, Menominee Indian Tribe of Wisconsin
- 164 • Chairperson, Oneida Tribe of Indians of Wisconsin
- 165 • Chairperson, Forest County Potawatomi Community
- 166 • Chairperson, Red Cliff Band of Lake Superior Chippewa Indians
- 167 • Chairperson, Sokaogon Chippewa Community
- 168 • Chairperson, St. Croix Chippewa Indians of Wisconsin
- 169 • President, Stockbridge-Munsee Band of Mohican Indians
- 170 • Tribal Administrators and program staff as determined by the Tribal Leadership
- 171 • The Executive Director of OJA
- 172 • OJA administrators and other staff as determined by the ED

173
174
175 OJA will prepare a draft agenda to include a description of the agency's programs, including an organization chart,
176 and to provide technical assistance to tribes on grant related issues. OJA will solicit input on agenda items from
177 tribal executives and will address issues identified by tribal officials.

178
179 *B. Other Meetings*

180
181 The OJA Executive Director will consult with tribal leaders in scheduling additional consultation sessions at his or
182 her discretion. In addition, any Tribal Chairperson or President may request meetings or other consultation with the
183 Executive Director or other OJA representatives.

184
185 *C. Annual Action Plan*

186
187 OJA will work appropriate Tribal program staff to develop an action plan by which this government-to-government
188 consultation policy will be implemented. The action plan will include:

- 189 • Programs: A list of programs and services available to Tribes, including an overview of OJA programs
190 and an OJA organization chart.
- 191 • Policy and Program Development: Description of new or proposed initiatives, programs, and policies
192 affecting Tribes. Determine a method for informing appropriate tribal contacts of ad hoc grant
193 opportunities.
- 194 • Priorities: Priority issues for resolution in conjunction with the Tribes.
- 195 • Consultation Process: The procedures to be used to consult with Tribes on existing and new policies and
196 programs.
- 197
- 198

199 D. *Training*

200
201 OJA management and staff will participate in training efforts established by DOA and other agencies related to
202 tribal issues. The purpose of this training is to educate OJA employees regarding the requirements of a meaningful
203 government-to-government relationship, including historical and cultural perspectives from the Tribes, and
204 information about the importance of consensus building, Tribal sovereignty and Tribal government.

205
206 **5. Resolution of Issues**

207
208 Throughout any given year, specific issues affecting one or more Tribes and OJA may arise. These issues may be
209 raised by either a Tribe or the OJA and may occur at various levels within either party. The following process is to
210 be used when such issues arise.

211
212 A. *Initial Discussion*

213
214 When an issue arises and a designated and authorized employee of either a Tribe or OJA contacts an employee of
215 the other entity, they will discuss the issue and attempt to resolve it. If higher level involvement is required, the
216 process described in Section 5-B will be followed.

217
218 If resolution or non-resolution of the issue would affect a Tribe or Tribes other than the Tribe involved, then further
219 discussion must occur as described in Section 5-C.

220
221 B. *Issues Requiring Higher Level Involvement*

222
223 If higher level involvement is needed, the issue will be raised to the appropriate level in OJA and the Tribe for
224 resolution. Within OJA, the Executive Director will facilitate contact with the appropriate staff if required.
225 Communication between those parties shall occur as soon as reasonably possible to determine if the issue can be
226 resolved. If the issue is resolved, no further action is required. If the issue cannot be resolved, the involved parties
227 will determine if a process can be established for resolving the issue. It is recognized that some issues may not be
228 able to be resolved to the satisfaction of all parties.

229
230 C. *Issues Affecting More Than One Tribe*

231
232 If it is determined that resolution or non-resolution of the issue will affect more Tribes than just the Tribe presently
233 involved in the discussion, the OJA representative will make contact with representatives of all other Tribes.
234 Communication involving all of the potentially affected parties will occur and will be facilitated by an OJA
235 representative.

236
237 If the issue is resolved through agreement of the involved parties, no further action is required. If the issue cannot
238 be resolved, then the issue shall be raised to higher level authorities as described in Section 5-B.

239
240 **6. Outreach to Tribal Governments by Committees and Workgroups**

241
242 The focus of this consultation policy is with individual Tribal governments. During the normal course of business, it
243 is often necessary for OJA to establish committees, councils, workgroups, or similar bodies to provide advice and
244 recommendations to OJA. Such committees, councils, workgroups or similar bodies, when dealing with policies or
245 programs affecting tribal governments, shall inform tribal Chairpersons/Presidents, in writing, of the proposed
246 policy or program in order to solicit tribal input.

247

Appendix A
GLOSSARY

For purposes of this consultation policy, the following terms and definitions will apply:

“*American Indian Tribal government*” means a sovereign government of a Native American people, embracing and occupying lands and territory, and having jurisdiction over same, lying within the geographical boundaries of the State of Wisconsin, which sovereignty is recognized by the Government of the United States of America and subject to the Constitution, laws and treaties of the United States of America, which also may be known as a “federally recognized Indian Tribe”.

“*Consultation*” references a tool used to facilitate communication and interaction between the state government entity and all of the federally recognized Tribes in Wisconsin.

“*Cultural awareness and sensitivity*” means having due knowledge of and regard for the behavior patterns, civilization, customs, arts, beliefs, institutions and all other achievements and manifestations of human work and thought as expressed in a particular community.

“*Federal Grant Programs*” means those federal programs in the U.S. Department of Justice and U.S. Department of Homeland Security for which OJA serves as the State Administering Authority (SAA). Grant programs that require applicants to compete for available funds are considered “competitive”; grant programs distributed to designated recipients based on a formula are considered “formula” grants; grants awarded based on appropriate exercise of discretion are considered “discretionary” grants.

“*Law Enforcement Agency*” means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority, as defined in sec. 165.83(1)(b), Wis. Stats.

“*OJA*” means the Wisconsin Office of Justice Assistance.

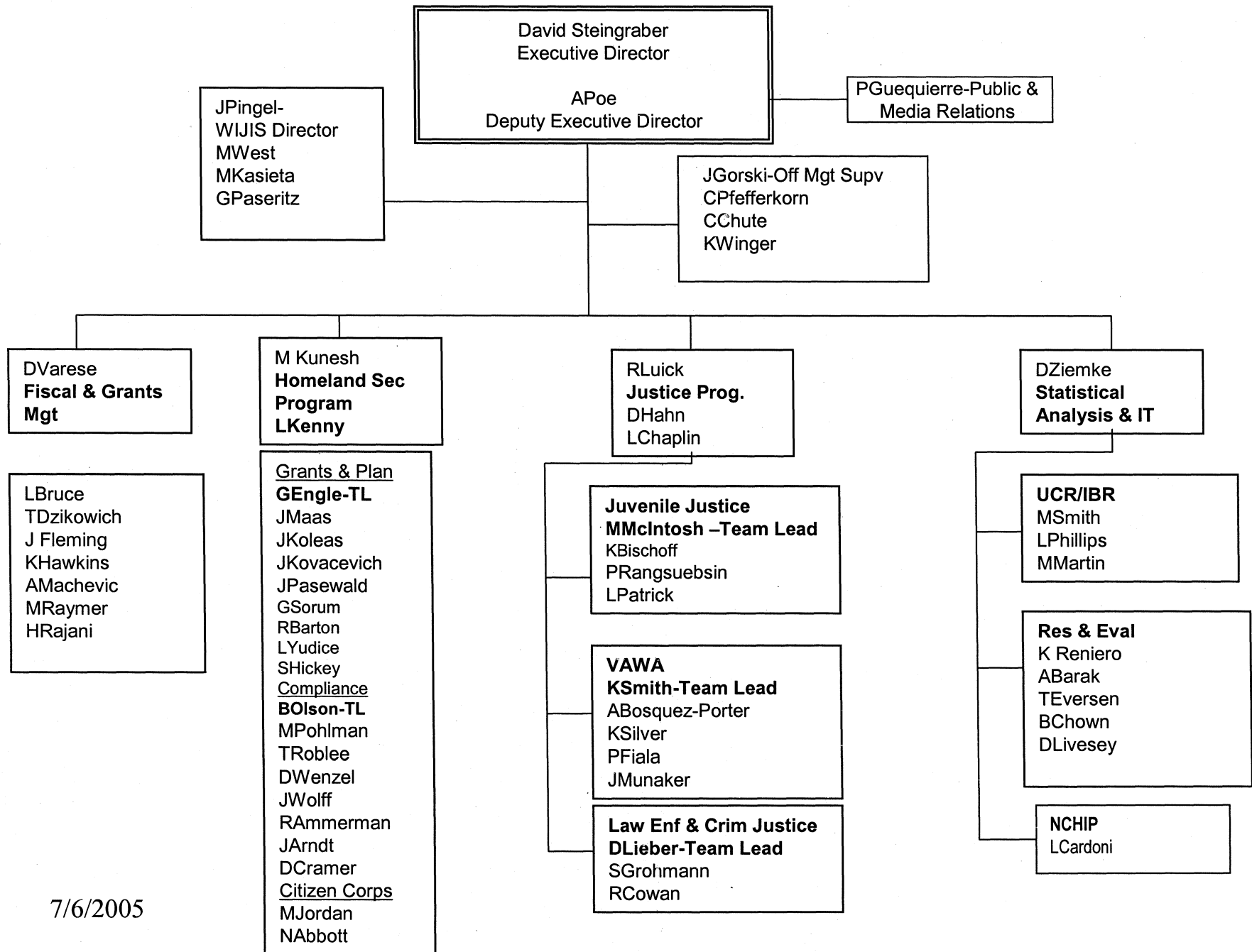
“*OJA Tribal Affairs Liaison*” means the individual employee(s) of the OJA assigned specific responsibility for coordinating with and providing technical assistance on and to Tribes.

“*Program Unit*” means a subunit of the OJA responsible for the management, administration, and provision of programs and services in specific program areas. For purposes of this agreement, “Program Unit” relates to one or more of the following entities: Fiscal and Grant Management Unit, Homeland Security Unit, Justice Programs Unit, Statistical Analysis Center and Wisconsin Justice Information Sharing Unit.

“*Government-to-government*” means communication and dealings between sovereign governments, their agencies and other official entities.

“*Sovereign*” means a state in which supreme authority is vested.

“*Tribal Law Enforcement Agency*” means an agency of a tribe that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances, that employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a) and that was created by a tribe that agrees that its law enforcement agency will perform the duties required of the agency under this section and s. 165.84, as defined in sec. 165.83(1)(e), Wis. Stats.



7/6/2005