
**Criminal Justice & Corrections
Committee**

HB 1936

Brief Description: Enacting the tribal law enforcement officers act of 2003.

Sponsors: Representatives Carrell, McCoy, O'Brien and Lovick.

Brief Summary of Bill

- Allows, under certain circumstances, tribal officers to exercise general authority peace officer powers over non-Native Americans on tribal lands.

Hearing Date: 2/26/03

Staff: Jim Morishima (786-7191).

Background:

Tribal Jurisdiction

Jurisdiction on tribal lands is governed by a combination of tribal law, state law, federal law, and treaty. In 1963 under federal authorization, Washington assumed criminal and civil jurisdiction over tribal lands within the state (the state has subsequently retroceded this jurisdiction back to the federal government and the tribes for six tribes in Washington). The state does not exercise civil or criminal jurisdiction over tribal members on tribal lands except for in the following cases: Compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and the operation of motor vehicles upon the public streets, alleys, roads, and highways.

Tribes generally have their own court systems, criminal statutes, and law enforcement agencies. Tribes that are subject to state jurisdiction may enter into agreements with local law enforcement agencies to provide law enforcement on tribal lands.

In general, the tribes do not have the inherent jurisdiction to try and to punish non-Native American members on tribal lands. However, tribal law enforcement officers do have the authority to stop non-Native American drivers on the reservation to investigate possible violations of tribal law. If the non-Native American driver is suspected of a crime, the tribal

officer may then temporarily detain the driver and hand him or her over to state law enforcement officials.

General Authority Washington Peace Officers

Under the Washington Mutual Aid Peace Officer Powers Act, a general authority Washington peace officer may enforce the traffic or criminal laws of the state throughout the state in the following circumstances:

- Upon the prior written consent of the sheriff or chief of police in whose primary jurisdiction the exercise of the powers occurs;
- In response to an emergency;
- In response to a request for assistance pursuant to a mutual law enforcement assistance agreement;
- When the officer is transporting a prisoner;
- When the officer is exercising an arrest or search warrant; or
- When the officer is in fresh pursuit.

Summary of Bill:

Tribal officers are authorized to exercise general authority peace officer powers in two situations: 1) when authorized by an agreement with the state; and 2) when authorized by agency-to-agency agreements or when commissioned by a chief law enforcement official.

1) Agreements with the State

Tribal officers may exercise general authority peace officer powers over non-Native American persons on tribal lands if the tribal government has entered into an agreement with the state that allows the arrest of such persons. The agreement must contain the following elements:

- The tribe is sovereign and agrees to follow all rules, procedures, and processes prescribed by the courts of the state for the purpose of enforcing state law upon non-Native Americans;
- The tribe agrees that arrested non-Native Americans are entitled to all due process provided by state law;
- The tribe recognizes the federal constitutional rights of an arrested non-Native American person as if that individual had been arrested by a law enforcement officer of a political subdivision of the state;
- The tribe agrees to maintain specified hiring and training standards for its commissioned officers as set forth by the Northwest Association of Tribal Enforcement Officers or their equivalent; and
- The tribe agrees to be civilly liable for acts or omissions of its law enforcement officers in the court of primary jurisdiction. Every tribal law enforcement agency not subject to the Federal Tort Claims Act must maintain a liability insurance policy to cover any liability arising from the enforcement of state criminal law.

The agreement may provide for the distribution of revenues and the payment of costs

resulting from the exercise of general authority peace officer powers by tribal law enforcement officers. Commissioned tribal law enforcement officers may participate in multiagency task forces and mutual aid operations if those actions are conducted under their established interagency agreements or the tribal law enforcement officers have been extended a commission to so act from a chief law enforcement official of a jurisdiction.

The exercise of general authority powers on tribal lands over non-Native Americans by tribal law enforcement officers does not grant such officers general authority peace officer powers under the Washington Mutual Aid Peace Officers Powers Act. Tribal law enforcement officers who are subject to an agreement must possess a certificate of basic law enforcement training, a certificate of equivalency, or an exemption from the requirement from the Criminal Justice Training Commission.

2) Agency-to-Agency Agreements or Commissions

A tribal officer may exercise the powers of a general authority peace officer if authorized by an agency-to-agency mutual aid agreement or a memorandum of understanding, or if the officer has been extended an individual commission for those purposes by the recognized chief law enforcement official of the agency for which the officer exercises the general authority peace officer powers. The commission may be extended or withdrawn by the elected or appointed chief law enforcement official or an agency, regardless of title.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.