

HOUSE BILL REPORT

HB 2848

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to the tribal law enforcement officers act of 2004.

Brief Description: Authorizing tribal law enforcement officers to enforce the laws of the state of Washington.

Sponsors: Representatives O'Brien, Tom, Kagi, Cairnes, Murray, McCoy, Cox, Hunt, Lovick, Flannigan and Dunshee.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/3/04, 2/6/04 [DP].

Brief Summary of Bill

- Allows, under certain circumstances, tribal officers to exercise arrest powers over non-tribal persons on tribal lands.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Veloria.

Minority Report: Do not pass. Signed by 3 members: Representatives Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Pearson.

Staff: Jim Morishima (786-7191).

Background:

Tribal Jurisdiction

Law enforcement 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 service on tribal lands.

In general, the tribes do not have the inherent jurisdiction to try and to punish non-tribal persons on tribal lands. However, tribal law enforcement officers do have the authority to stop non-tribal drivers on the reservation to investigate possible violations of tribal law. If the non-tribal 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.

Summary of Bill:

Tribal law enforcement officers are authorized to exercise arrest powers over non-tribal persons on tribal lands in three main circumstances.

First, when the officer is participating in a multi-agency task force or a mutual aid operation conducted under an established interagency agreement or memorandum of understanding.

Second, when the officer has been extended a commission to so act from the chief law enforcement official of a political subdivision of the state within which the tribal lands or reservation are wholly or partially located.

Third, when the following pre-conditions are met:

- The officer must possess a certificate of basic law enforcement training, a certificate of equivalency, or an exemption from the Washington Criminal Justice Training Commission.
- The officer's employing tribal government must have entered into an agreement with the county or counties that process the arrests for increased costs and revenues associated with arrests by tribal officers. This type of agreement must be negotiated in good faith.
- The officer's employing tribal government must have a valid agreement filed with the Governor's Office of Indian Affairs that contains the following elements:
 - * A statement that the tribe is sovereign and an agreement that the tribe will follow all the rules, procedures, and processes prescribed by the courts of the state for the purpose of enforcing state law upon non-tribal persons.
 - * An agreement that an arrested non-tribal person is entitled to all due process provided by the state.
 - * An agreement that the tribe must recognize the federal and state constitutional rights of the arrested person.
 - * An agreement that the tribe must maintain specified hiring and training standards for its law enforcement officers as set forth by the Northwest Association of Tribal Enforcement Officers or equivalent standards.

- * An agreement that the tribe is civilly liable for the acts of its officers when they are exercising arrest powers over non-tribal persons.
 - * If the tribe is not covered by the federal Tort Claims Act, proof of an insurance policy in the amount of \$1,000,000 covering any liability arising from the arrests of non-tribal persons on tribal lands by tribal officers.
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Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This is the second iteration of this bill. Many of the problems with last year's bill have been worked out in this version. This is an opt-in bill and therefore will not disrupt any existing agreements. If a tribal officer goes through all the same training and accreditation as a state officer, then he or she should have the same authority as that state officer within the external boundaries of tribal lands.

(With concerns) This bill may subject county governments to civil liability. It is unclear in the bill who negotiates these agreements on the part of the state. It is unclear what the status of these tribal officers will be under the bill in that they could be state law enforcement officials or local law enforcement officials. The limits set by this bill may adversely affect existing relationships between counties and tribes. Also, there are problems with the supervision and control of the tribal officers under this bill. Hiring, supervision, and training standards are set by an organization of tribal law enforcement officers.

Testimony Against: Allowing tribal officers to arrest non-tribal persons endangers the rights of non-tribal citizens living on tribal lands. Tribal officers are not politically accountable like the county sheriff because non-tribal persons do not have representation in tribal governments. Furthermore, the training standards in this bill are set by a body that is similarly not politically accountable.

Persons Testifying: (In support) Representative McCoy, sponsor.

(Opposed) Thomas Michell, Tulalip Community Association.

(With concerns) Sophia Byrd, Association of Counties; and Stew Menefee, Grays Harbor County Prosecutor and Washington Association of Prosecuting Attorneys.

(Neutral) Sharon Tolton, Deputy Director, Criminal Justice Training Commission.

Persons Signed In To Testify But Not Testifying: None.