

# SENATE BILL REPORT

## EHB 2476

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As Reported By Senate Committee On:  
Judiciary, February 29, 2008

**Title:** An act relating to authorizing tribal police officers to act as general authority Washington state peace officers.

**Brief Description:** Authorizing tribal police officers to act as general authority Washington state peace officers.

**Sponsors:** Representatives McCoy, Simpson, Lantz, Appleton, O'Brien, Kenney, Sells, Moeller, Hudgins, Dunn, Upthegrove and Chase.

**Brief History:** Passed House: 2/18/08, 58-37.

**Committee Activity:** Judiciary: 2/22/08, 2/29/08 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators Kline, Chair; Tom, Vice Chair; Carrell, Hargrove, McDermott and Weinstein.

**Staff:** Robert Kay (786-7405)

**Background:** Definitions.

- "Certification" means official recognition by the Washington Criminal Justice Training Commission (CJTC) that an individual police officer has completed: (1) basic law enforcement training at the Washington CJTC Law Enforcement Academy in Burien, Washington or supplemental equivalency training at the CJTC Academy if the basic training was completed at another academy approved by the CJTC; and (2) the employment screening requirements of: (i) a psychological evaluation; (ii) a polygraph; and (iii) release of all background files and records that are pertinent to the CJTC's decision on certification;
- A "Washington peace officer" is a law enforcement officer who is subject to mandatory training at the Washington Criminal Justice Training Commission (the commission or CJTC) Law Enforcement Academy, at Burien, Washington, or at another academy approved by the commission;
- A "general authority Washington peace officer" is any officer of a general authority law enforcement agency in the state who is commissioned to enforce the criminal laws of the state of Washington generally;

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- "General authority police power" means the power of a commissioned law enforcement officer to enforce the criminal and traffic laws of this state generally throughout the boundaries of the state in the following circumstances:
  - 1) with the prior written consent of the sheriff or chief of police in whose primary territorial jurisdiction the exercise of the powers occurs;
  - 2) in response to an emergency involving immediate threat to human life or property;
  - 3) in response to a request for assistance pursuant to a mutual law enforcement assistance agreement;
  - 4) in response to the request of a peace officer with enforcement authority;
  - 5) when transporting prisoners;
  - 6) when executing an arrest warrant or search warrant; or
  - 7) when in fresh pursuit.

Tribal Police Officer Certification. In 2006 the Legislature passed a law allowing tribal police officers to voluntarily obtain Washington police officer certification through the state's CJTC. Indian tribal officers making this certification must meet the same statutory requirements as for Washington peace officers, including basic law enforcement training at the CJTC Academy and submitting to a psychological evaluation, a polygraph, and a criminal background check. An application by a tribal law enforcement officer for tribal police officer certification is processed in the same manner as any application by a Washington peace officer for peace officer certification.

Interlocal Agreement. To participate in the tribal officer certification program, tribal governments must enter into a written interlocal agreement with the CJTC. The written agreement must provide that the tribal law enforcement agency employing the tribal officer applying for certification will:

- 1) release all necessary personnel records and background information to allow the CJTC to assess the tribal officer's performance before and after certification; and
- 2) report to the CJTC:
  - i) commission of a felony by the tribal officer;
  - ii) discharge of the tribal officer due to:
    - a) conviction of:
      - any crime committed under color of authority as a peace officer;
      - any crime involving dishonesty or false statement within the meaning of Evidence Rule 609;
      - any unlawful use or possession of a controlled substance; or
      - any other crime the conviction of which disqualifies a Washington citizen from the legal right to possess a firearm under state or federal law;
    - b) conduct that would constitute any of the crimes addressed in (a); or
    - c) knowingly making materially false statements during disciplinary investigations, where the false statements are the sole basis for the termination;
  - iii) interference by the tribal officer with an investigation by the CJTC regarding denial or revocation of a certificate by:
    - a) knowingly making a materially false statement to the commission; or

- b) in any matter under investigation by the CJTC, tampering with evidence or intimidating any witness; or
- iv) termination of the tribal officer by the tribal police department for any reason.

**Summary of Bill (Recommended Amendments):** Tribal police officers are authorized to act as general authority Washington peace officers when the appropriate sovereign tribal nation meets specified requirements regarding certification, insurance liability, administration, and either: (1) enters into an interlocal agreement with the appropriate local government; or (2) failing such an agreement, submits to binding arbitration with the local government in order to reach such an agreement. The appropriate tribal government must submit proof of: (1) a tribal officer's required certification; (2) liability insurance to cover tortious conduct of tribal officers; and (3) a waiver of the defense of sovereign immunity by the tribal nation and its insurance companies to the Office of Financial Management (OFM) for review and verification. Only when this information has been provided to OFM are the tribal police officers authorized to act as general authority Washington State Peace Officers. The CJTC must notify the OFM: (1) if a tribal police officer authorized to act as a general authority Washington peace officer has been decertified pursuant to RCW 43.101.157; or (2) if the sovereign tribal government of a certified tribal officer is otherwise out of compliance with RCW 43.101.157.

The general authority police power can be exercised only within the boundaries of the primary jurisdiction of a certified Washington peace officer, except in the circumstances listed under the definition of general authority police power above. In the case of a certified peace officer from a tribal police department, the primary jurisdiction is within the exterior boundaries of the reservation lands.

Certification. For a tribal police officer to be authorized as a general authority Washington peace officer, the tribal police officer must be certified pursuant to statute. As noted above, since 2006, before a tribal police officer can be certified, the appropriate tribal law enforcement agency must enter into a written inter-local agreement with the CJTC regarding release of information about, any disqualifying conduct by, and any disciplinary discharge or termination for any reason of the tribal officer. That requirement is not changed. According to the CJTC, the intent of this requirement is to put the same burden of release of information and reporting on the tribal government as on municipal and county police departments.

Insurance Liability. Tribal governments must carry liability insurance and they and their insurance companies must waive a sovereign immunity defense to the extent of such coverage so as to allow a civil action for damages in the event a tribal police officer acting in the capacity of a state peace officer commits a tort. The OFM will have discretion to determine the adequacy of coverage based on its own risk management analysis.

Interlocal Citation Procedure. Authorized tribal police officers acting in the capacity of a general authority Washington peace officer must submit copies of any citation, notice of infraction, or any incident report to the appropriate local police chief or sheriff within three days. Any citation must be to Washington courts, except that any Indian cited within the boundaries of the reservation may be cited to tribal court. Any citation that does not follow these requirements is unenforceable.

Interlocal Agreement with Appropriate Local Government. Another requirement for commissioning of certified tribal officers as general authority Washington peace officers is entry by the sovereign tribal nation into an interlocal agreement with the appropriate local government in the context of the concurrent jurisdiction of the tribal nation and the local government on the tribal reservation. If the tribal nation and the local government reach such an agreement, and the tribal nation and certified tribal officers have met all the other requirements of the act, then the certified tribal officers are by law commissioned as general authority peace officers.

Binding Arbitration. If the tribal nation and the appropriate local government are unable to reach an interlocal operations agreement by June 1, 2009, the parties are required by the act to enter binding arbitration. Each party must select an arbitrator, and the two arbitrators selected by the parties must agree on a third arbitrator. After submission by the parties of their respective best offers, the three-person arbitration panel must select the offer that best implements the provisions of the act.

**EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments):** Both the sovereign tribal nation and its insurance companies must waive the defense of sovereign immunity to allow a civil tort action for damages. For purposes of civil liability, a tribal police officer is not an employee of either the state or any local government. Neither the state nor any local government must be liable for the tortious conduct of a tribal police officer.

In order for certified tribal officers to be commissioned as general authority Washington peace officers, the appropriate sovereign tribal nation, and appropriate local government must enter into an interlocal agreement. Upon entering into such an agreement, if all other requirements have been met by the tribal nation and its certified tribal police officers, those officers are commissioned by law as general authority Washington peace officers.

If the appropriate sovereign tribal nation and local government are unable to reach an agreement by June 1, 2009, the tribal nation and the local government must enter into binding arbitration to reach an agreement.

The effective date of the act for any sovereign tribal nation meeting all the requirements of the act, including the requirement of an interlocal agreement with the appropriate local government, is immediately upon meeting the requirements, or June 1, 2009, whichever is earlier.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Bill:** PRO: An Amnesty International report alleges that Indians are suffering a lack of protection from law enforcement under the present system. Indians suffer as victims of violent crime at a rate 2.5 times the national average. Between 1976 and 1999, Indians on average were 1.6 percent of the state's

population, but were 4 percent of the murder victims in the state. Depending on the type of violent crime, non-Indians are the perpetrators of violent crime against Indians in from 60 to 90 percent of the cases. Yet, tribal police officers cannot investigate and arrest non-Indian perpetrators of these crimes on the reservation. When a serious felony committed by a non-Indian on the reservation occurs and a suspect is detained by a tribal police officer, the tribal officer is forced to wait for the arrival of a sheriff's deputy, and consequently, the tribal police officer is then unavailable to respond to other calls for service on the reservation. This practice of calling local non-Indian law enforcement agencies to arrest and investigate crimes committed by non-Indians on the reservation has been in place now for 30 years, and it does not work.

Six out of the 29 Indian tribes in Washington have tribal police departments whose roster of officers, including supervisory staff, are ready and willing to be certified and commissioned as general authority Washington police officers. These police departments have standard 14-week field training programs for their officers. Tribal police departments who have officers certified and commissioned under this bill will have supervisory personnel and field training officers who are also certified and commissioned who can accomplish effective field training. This bill does not contain a requirement that the whole roster of officers in any tribal police department must be certified and commissioned because for smaller tribes such a requirement would act as a barrier in bringing their police departments up to the standards maintained by the Criminal Justice Training Commission. This bill will allow some flexibility to smaller tribes.

Four other states have implemented similar legislation, and the outcomes have been uniformly positive. A study by the International Association of Police Chiefs and the Department of Justice showed no increase in tort claims against county sheriff's departments after commissioning of certified tribal officers as general authority police officers. Another study by the National Conference of State Legislatures of states which have passed similar legislation showed increased cooperation between tribal and county and municipal police departments, and an average savings by sheriff's departments in counties adjacent to reservations of \$50,000 in law enforcement costs.

The tribes have worked with the Office of Financial Management to demonstrate their commitment to retaining adequate liability insurance and effectively to waiving the defense of immunity for torts committed by Indian police against non-Indians.

CON: This bill allows tribal officers coming into contact with non-Indians on the reservation to be unaccountable to those non-Indians for any misconduct, because the non-Indians have no way to vote the tribal chief out of office, as they could a sheriff. It is not clear that the waiver by the tribe of sovereign immunity regarding tort liability to non-Indians will be effective. The county police departments in counties adjacent to the reservations should have a right of first refusal to take responsibility for the investigation or arrest of a non-Indian on tribal land. The present system already allows for tribal officers to be specially commissioned by the county sheriff to act as general authority county sheriff's deputies. There are tribal members on reservations who are against the assumption by their tribe's police officers of general authority police powers, but these tribal members are afraid to speak out for fear of retribution by their tribal governments.

This bill should include a provision whereby all of the officers in a tribal police department must be commissioned, as is the requirement for county and municipal police departments in this state. This bill would allow a junior officer to be certified and commissioned, while allowing senior supervisory officers to remain uncertified and uncommissioned. Under this bill, it will not necessarily be the case that tribal police departments will do adequate field training.

Under this bill tribal officers will be able to arrest and investigate major crimes committed by non-Indians on tribal land, when they are not allowed to do so by the federal government under the Major Crimes Act when such a major crime is committed by an Indian on tribal land. The FBI handles such cases where an Indian is the suspect.

The Legislature should not pass this bill this session to allow for more time to work out the problems with the bill.

**Persons Testifying:** PRO: Chief Mike Lasnier, Suquamish Tribal Police Department, NW Association of Tribal Law Enforcement Officers; Chief Scott Smith, Tulalip Police Department, Washington Association of Sheriffs and Police Chiefs; Michael Taylor, Attorney, Tulalip Tribes.

CON: Sheriff Ken Irwin, Yakima County Sheriff's Department; Sheriff Dan Kimball, Thurston County Sheriff's Department; Thomas J. Mitchell, Marysville/Tulalip Community Association; Philip Brendale, citizen.