

HOUSE BILL REPORT

HB 1936

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to the tribal law enforcement officers act of 2003.

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

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

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/26/03, 2/28/03 [DPS].

Brief Summary of Substitute Bill

- Creates the Joint Select Committee on Tribal Law Enforcement Relations to study tribal law enforcement jurisdiction and the effect of extending general authority peace officer powers to tribal law enforcement officers.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

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 punish non-Native Americans 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 or local law enforcement officials.

Summary of Substitute Bill:

The Joint Select Committee on Tribal Law Enforcement Relations is established. The joint select committee's membership is as follows:

- Two members from the House of Representatives, appointed by the Speaker of the House;
- Two members from the Senate, appointed by the President of the Senate;
- Twenty-nine members from the 29 federally recognized tribes, appointed by the tribes themselves;
- One member with tribal law enforcement expertise, appointed by the Washington Association of Tribal Enforcement Officers;
- One prosecuting attorney, appointed by the Washington Association of Prosecuting Attorneys;
- One defense attorney, appointed by the Washington State Bar Association;
- One elected sheriff or police chief, appointed by the Washington Association of Sheriffs and Police Chiefs;
- One member with expertise in state-tribal relations, appointed by the Governor; and
- One member who is a non-tribal person occupying land held in fee simple within the boundaries of tribal land, appointed by the Governor.

The joint select committee must study tribal law enforcement jurisdiction and the effect of extending general authority peace officer powers to tribal officers. The joint select committee must report its findings and recommendations, including any proposed legislation, to the Governor and the appropriate standing committees of the Legislature no later than December 1, 2003. Staff support to the joint select committee must be provided by the Office of Program Research and Senate Committee Services. The joint select committee expires on March 31, 2004.

Substitute Bill Compared to Original Bill:

The substitute creates the joint select committee and removes the provisions granting general authority peace officer powers to tribal law enforcement officers.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill will increase cooperation between tribal and non-tribal law enforcement. Criminal activity is growing in and around tribal reservations. The bill will increase safety on tribal and non-tribal lands. It will save tax dollars by allowing law enforcement resources to be used more efficiently. The bill will stop duplicative and wasteful use of law enforcement resources. The bill is like a road; it does not force anyone to do anything. The bill will also end jurisdictional confusion between the tribal and non-tribal law enforcement and will lead to more effective community-oriented policing. The bill will allow statistical trends to be more easily identified and will allow better training of officers. The bill ensures that the rights of the arrested will be protected and that the tribes will be held liable for their actions. No tribal law enforcement officials are granted commissions by this bill and any officers who are extended general authority peace officer powers must have adequate training.

(Concerns) This bill needs more consideration to make sure that it is done right the first time. An interim study should be done to determine what the best route would be. Tribal officials should be involved in the development of this idea. Several parts of this bill are unclear including the mechanism through which the general authority peace officer powers are granted and the required tort liability insurance.

Testimony Against: Because both the state and the tribes are sovereign governments, the tribes should have no law enforcement authority over non-tribal persons. Tribal law enforcement officers often have inadequate training. This bill represents an end-run around the authority of the local sheriff “ the local governments should decide whether to grant this authority to tribal officers. Cross-deputization does not work in all cases. American citizens should not be subjected to the authority of a government in which they have no representation. Giving tribal officers jurisdiction over non-tribal persons on state roads could deny people their civil rights.

Testified: (In support) Representative Carrell, prime sponsor; Representative McCoy, sponsor; Mike Lasnier, Northwest Association of Tribal Enforcement Officer and Lower Elwha Tribe; Mike DeCapria, Quinault Nation Police; and J. A. Goss, Jr., Tulalip Tribe

Police Department.

(Concerns) Dawn Vyvyan, Yakama Nation; and Randy Scott, Quinault Nation Colville Confederated Tribes.

(Opposed) Sandra Swanson, citizen; and Rusty Jones, Toppenish City Councilman.