

HOUSE BILL REPORT

EHB 2476

As Amended by the Senate

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

Brief History:

Committee Activity:

State Government & Tribal Affairs: 1/18/08, 1/25/08 [DP].

Floor Activity:

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

Senate Amended.

Passed Senate: 3/7/08, 34-15.

<p style="text-align: center;">Brief Summary of Engrossed Bill</p> <ul style="list-style-type: none">• Authorizes tribal police officers to act as general authority Washington State Peace Officers within the exterior boundaries of the reservation.
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HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

Majority Report: Do pass. Signed by 5 members: Representatives Hunt, Chair; Appleton, Vice Chair; Liias, Miloscia and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Armstrong, Assistant Ranking Minority Member; Kretz.

Staff: Colleen Kerr (786-7168).

Background:

General Authority State Peace Officers

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.

A general authority Washington State Peace Officer is any officer of a general authority law enforcement agency in the state, including those of local governments, the state patrol, and the Department of Fish and Wildlife. General authority peace officers may enforce criminal or traffic laws of the state throughout the territorial boundaries in the following circumstances:

- under the auspices of an inter-local agreement;
- in response to an emergency involving immediate threat to human life or property;
- in response to a request for assistance pursuant to a law enforcement assistance agreement;
- when transporting prisoners;
- when executing an arrest warrant or search warrant; or
- when in fresh pursuit.

Tribal Police Officer Certification

In 2006 the Legislature passed law allowing tribal police officers to voluntarily obtain Washington police officer certification through the state's Criminal Justice Training Commission (CJTC). Officers making this certification must meet the statutory requirements for all certified state police officers, including submitting to psychological tests and criminal background checks. Applications by tribal law enforcement agencies for police officer certification are processed in the same manner as any state application.

To participate in this program, tribal governments must enter into a written agreement with the CJTC. The written agreement must require the tribal law enforcement agency and its officers to comply with all of the requirements for granting, denying, and revoking certification as they are applied to state general authority peace officers.

Public Law 280

Public Law 280 (PL 280) is a federal law whereby states may assume jurisdiction over Indian reservations. The law mandates transfer of federal law enforcement authority within certain tribal governments to state government. Participating states are specified in statute; Washington was added to the federal statute at a later date.

Pursuant to Washington's assumption of jurisdiction in statute, the state assumes criminal and civil jurisdiction over Indian Country except over Indians on tribal or allotted lands within an established reservation. The state has complete jurisdiction in eight areas: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoption proceedings; dependent children; and the operation of motor vehicles on public streets, roads, alleys, and highways.

In Washington, the Muckleshoot, Squaxin, Nisqually, and Skokomish tribes have requested full state civil and criminal and adjudicatory authority in Indian Country. After 1968 Congress amended PL 280 so that tribal consent is required for the state to extend jurisdiction. This applies to the Jamestown S'Klallam; Nooksack; Upper Skagit; Stillaguamish; Sauk-Suiattle; Samish; Cowlitz; Snoqualmie; and Cook's Landing. The Samish and Cowlitz currently do not have reservations.

The remaining tribes are partial-PL 280 tribes: Chehalis; Colville; Yakama; Hoh; Kalispell; Lower Elwha; Lummi; Makah; Port Gamble S'Klallam; Puyallup; Quileute; Quinault; Shoalwater Bay; Spokane; Suquamish; Swinomish; Tulalip; and Upper Skagit. Partial-PL 280 tribes have their own tribal governments including comprehensive court systems and codes and law enforcement agencies.

Criminal Jurisdiction in Indian Country

In Washington, criminal jurisdiction on Indian reservations is based partly on whether the tribe has PL 280 status, the status of the individual parcels of the land, and whether the individual in question is Indian or non-Indian. County or city law enforcement maintains jurisdiction over fee land within the reservation and, generally speaking, over non-Indians within the exterior boundaries of the reservation. Under federal law, tribal law enforcement generally has jurisdiction over Indians in Indian Country but not over non-Indians.

Summary of Engrossed Bill:

Tribal police officers are authorized to act as general authority Washington State Peace Officers when the appropriate tribal government meets specified requirements regarding certification, insurance liability, and administration. The appropriate tribal government must submit proof of the required certification and other information 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 authority is granted only within the exterior boundaries of the reservation or outside the exterior boundaries of the reservation in pursuant to statute: with consent of the local sheriff; in response to an emergency involving threat to human life or property; in response to a request for assistance pursuant to a mutual law enforcement assistance agreement; when transporting a prisoner; when the officer is executing an arrest or search warrants; or when an officer is in fresh pursuit.

Certification

For a tribal police officer to be authorized as a general authority Washington State Peace Officer he or she must be certified pursuant to statute. The appropriate tribal law enforcement agency must have a written agreement with the CJTC and have submitted its police officers seeking certification to the same requirements as the state's certified peace officers.

The Criminal Justice Training Commission must notify OFM in the event a tribal police officer authorized under this section is decertified or if a participating tribal government is otherwise in noncompliance with statutory requirements.

Insurance Liability

Tribal governments must carry liability insurance and waive sovereign immunity 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.

Inter-Local Requirements

Authorized tribal police officers acting in the capacity of a state 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 citations must be to Washington courts, except that any Indian cited within the exterior boundaries of the reservation may be cited to tribal court. Any citation that does not follow these requirements is unenforceable.

EFFECT OF SENATE AMENDMENT(S):

Sovereign tribal governments are required to provide OFM with a copy of an interlocal agreement reached under chapter 39.34 RCW for purposes of OFM determining the adequacy of liability insurance;

Where appropriate, local government has been specified in addition to the State of Washington to clarify that tribal police officers authorized under this act are not employees of state or local government for purposes of civil liability;

Adds language to the effect that nothing in the effect impairs the implementation of an interlocal agreement pursuant to chapter 39.34 RCW;

Adds language clarifying that nothing in this act has an effect on the existing authority of state and local law enforcement officers under federal law to enforce state law within the external boundaries of an Indian reservation, and (2) to enter Indian country in fresh pursuit of a person suspected of violating state law in order to investigate and effectuate an arrest;

Adds an effective date of July 1, 2009 and requires that those sovereign tribal governments that do not have an interlocal agreement with the appropriate local governments by the effective date shall be subject to binding arbitration with those governments for purposes of reaching an interlocal agreement prior to obtaining authorization under the Act; and

Those tribes that become eligible for authorization after the effective date of the act and who do not have an interlocal agreement may submit proof of liability insurance and training certification to OFM and then have one year to negotiate and complete an interlocal agreement, if an interlocal agreement is not completed after one year then the tribe and the local governments must submit to binding arbitration as state above.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill represents the culmination of months of work with input by many stakeholders and shows true collaboration and compromise. Indian country has some of the

highest crime rates of any groups of people and an overwhelming majority of the crimes committed against Indians are by non-Indians, people who the tribal police have no jurisdiction over. Local law enforcement, particularly in rural areas, focuses where they have a majority of their population and it is not in Indian Country, therefore Indian Country is left with gaps in its law enforcement. This bill is restrained in its scope, at this time only six tribes are certified pursuant to statute and of those six tribes, there are only 45 tribal officers eligible for authorization.

(Opposed) Sheriffs are concerned about not having a local say. The way this bill is constructed prevents the local county law enforcement from being able to opt out of the agreement at the discretion of the sheriff. The sheriff is an elected official and his jurisdiction should be taken into account in the bill. The bill should require the negotiation on a memorandum of understanding with the appropriate local government to address jail and other associated costs. There are also questions with regard to liability: even though there is a limited waiver of sovereign immunity, there are no provisions for who will pay in the event there is a judgment in excess of the liability insurance.

(Information only) The Bureau of Indian Affairs training in New Mexico is equivalent to Washington state police officer basic training. Tribal police also have a two week equivalency training. For state police officers to be cross-commissioned as tribal police, they would have to complete this basic training.

Persons Testifying: (In support) Representative McCoy, prime sponsor; Chief Mike Lanier, Suquamish Tribe; Erin Nielsen; Bill Hanson, Washington State Fraternal Order of Police; Redwolf Pope, United Indians of All Tribes Foundation; and Scott Smith, Tulalip Police Department.

(Opposed) Sheriff Ken Irwin, Yakima County Sheriff's Office; Thomas Mitchell; Bill Elfo, Washington State Sheriff's Association; and Dan Fazio, Washington Farm Bureau.

(Information Only) Doug Blair, Criminal Justice Training Commission.

Persons Signed In To Testify But Not Testifying: None.