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JOINT LEGISLATIVE COUNCIL
REPORT NO. 18 TO THE 1993 LEGISLATURE

LEGISLATION ON TRIBAL LAW ENFORCEMENT OFFICERS

1993 ASSEMBLY BILL 1198, Relating to Tribal Law Enforcement Officers

147873

U.S. Department of Justice
National Institute of Justice

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February 25, 1994

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JOINT LEGISLATIVE COUNCIL
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PART I

KEY PROVISIONS OF LEGISLATION

1993 ASSEMBLY BILL 1198

1993 Assembly Bill 1198 relates to the powers and privileges of law enforcement officers who are employed by Indian tribes or bands. The Bill does the following:

- Grants to tribal law enforcement officers who meet certain specified requirements the same powers and duties to enforce state laws and to make arrests of Indian and non-Indian persons for violations of those laws that sheriffs have. These powers generally may be exercised only on the reservation or trust lands of the tribe or band that employs the officer.
- Permits tribal law enforcement agencies and officers to have the same access to the state criminal identification system that other law enforcement agencies and officers have, if the tribe that created the tribal agency agrees that the agency will perform the duties placed on other agencies with respect to the system.
- Provides that tribal law enforcement officers may become state certified and may exercise the previously described powers if they meet the requirements for certification and agree to accept the various duties of law enforcement officers set forth in state statutes.



PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The American Indian Study Committee (AISC) is a permanent Committee of the Joint Legislative Council established under s. 13.83 (3), Stats. The Committee is directed by statute to:

...study the problems and develop specific recommendations and legislative proposals related to American Indians and the various Indian tribes in this state.

The membership of the AISC, appointed by the Joint Legislative Council, consists of eight legislative members from the Senate and the Assembly and six Public Members appointed from names submitted by the Wisconsin Indian tribes and the Great Lakes Inter-Tribal Council. The Committee is assisted by a Technical Advisory Committee (TAC) composed of a representative of each of the following state departments: Public Instruction; Health and Social Services; Industry, Labor and Human Relations; Justice; Natural Resources; Revenue; and Transportation. A Joint Legislative Council membership list is included in Appendix 1; the AISC and TAC membership lists are included in Appendix 2.

B. SUMMARY OF MEETINGS

The AISC held three meetings during the period covered by this Report on the following dates:

August 17, 1993 (Lac du Flambeau Reservation)
December 14, 1993 (Madison)
January 24, 1994 (Madison)

At the August 17, 1993 meeting, the Committee discussed the topic of intergovernmental cooperative agreements between local units of government and Indian tribes or bands and gave preliminary approval to a bill draft on this subject. The Committee also discussed the topic of exempting from state registration requirements boats, snowmobiles and all-terrain vehicles (ATV's) registered under tribal registration programs and gave final approval to a bill draft on this subject. The Committee also heard testimony from invited speakers regarding law enforcement on Indian reservations. Finally, the Committee discussed topics for inclusion in future agendas of the Committee.

At the December 14, 1993 meeting, the Committee discussed the topic of intergovernmental cooperative agreements between local units of government and Indian tribes or bands and gave final approval to a bill draft on this subject. The Committee also heard a presentation by staff on law

enforcement on Indian reservations. The Committee discussed options for legislation and gave staff preliminary drafting instructions on this subject.

At the January 24, 1994 meeting, the Committee discussed WLCS: 499/1, draft legislation on law enforcement on Indian reservations, and gave final approval to a redrafted version of that draft, WLCS: 499/2. [This draft subsequently became 1993 Assembly Bill 1198.]

C. COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES

1. Committee Vote

At its January 24, 1994 meeting, the AISC voted to recommend WLCS: 499/2 to the Joint Legislative Council for introduction in the 1993-94 Legislature by a vote of Ayes, 11 (Reps. Boyle, Riley, Holperin, Musser, Ourada, Prosser and Vander Loop; and Public Members Plucinski, Lowe, La Fernier and Powless); Noes, 0; and Absent, 3 (Rep. Brancel; and Public Members Ackley and Soulier).

2. Joint Legislative Council Vote

At its February 3, 1994 meeting, the Joint Legislative Council voted to introduce the draft by a vote of Ayes, 19 (Cochairpersons Rude and Schneider; Sens. Burke, Drzewiecki, Ellis, Farrow, George, Jauch, Lekan, Lorman and Risser; and Reps. Carpenter, Deininger, Gruszynski, Kunicki, Linton, Potter, Prosser and Vergeront); Noes, 1 (Sen. Lasee); and Absent, 2 (Reps. Brancel and Travis).

D. STAFF MATERIALS

Appendix 3 lists all of the materials prepared for or submitted to the AISC during the period covered by this Report. The following document, prepared by the Legislative Council Staff, may be of particular interest to persons interested in the Bill described in this Report:

- Memorandum, *Law Enforcement on Indian Reservations* (December 8, 1993).

PART III

BACKGROUND; DESCRIPTION OF BILL

This Part of the Report provides background information on and a description of 1993 Assembly Bill 1198.

A. BACKGROUND

1. Current Law

The State of Wisconsin has jurisdiction over most crimes committed on Indian reservations (except for the Menominee Reservation), pursuant to a 1953 federal law commonly known as Public Law 280 or P.L. 280. The state's criminal jurisdiction under P.L. 280 pertains to offenses committed by or against Indians; the state also has jurisdiction over wholly non-Indian crimes committed on Indian reservations. The tribes have some measure of criminal jurisdiction over Indian persons but generally do not have criminal jurisdiction over non-Indians. However, the U.S. Supreme Court recently held that tribal law enforcement authorities have the power to restrain persons who disturb order on the reservation and, if necessary, to eject them. Further, where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport the person to proper authorities.

Over the years, counties have assumed the primary responsibility for providing law enforcement services on reservations in Wisconsin. Recently, a number of tribes have begun to more fully develop their law enforcement capabilities. Four P.L. 280 tribes, as well as the Menominee Tribe, have established their own police departments. The tribal police officers are permitted, by policy of the State Law Enforcement Standards Board, to attend the same law enforcement recruit training and recertification training that other law enforcement officers in the state receive. The costs of the training for tribal officers are paid by the tribe that employs the officer.

Tribal police officers have the power to enforce tribal laws and ordinances with respect to Indian persons but do not have inherent authority to enforce state criminal laws against any person, Indian or non-Indian. However, a county sheriff may, under s. 59.21 (5), Stats., deputize a tribal police officer to exercise law enforcement powers the tribal officer otherwise does not possess. This includes the power to enforce state laws against Indian and non-Indian persons and to make arrests for violations of those laws. Pursuant to deputization, tribal officers may be authorized to transport offenders to jails or other detention facilities off the reservation and to provide backup assistance to sheriffs' officers and, in some cases, other police agencies throughout the county.

Counties and tribes may apply to the State Department of Justice (DOJ) for law enforcement funding under the County-Tribal Cooperative Law Enforcement Program in s. 165.90, Stats. The original legislation creating the Program was developed by the AISC in 1982-83 in response to

concerns raised by tribal officials about inadequate county law enforcement services on some reservations and by county officials about inadequate funding for those services and, in some cases, a lack of cooperation from some reservation residents. To receive Program funds, a county and tribe must develop and submit to the DOJ a joint program plan detailing a number of items relating to the operation of their county-tribal program. In calendar year 1993, funds totaling \$573,703 were awarded to 14 county-tribal cooperative law enforcement programs.

2. Request for Legislation

In 1992, representatives of the Lac du Flambeau Band of Chippewa Indians discussed with Representative James Holperin (a member of the AISC) several concerns relating to the provision of law enforcement by tribal law enforcement officers. Their primary concern was the unwillingness of the then-Vilas County Sheriff to deputize tribal law enforcement officers employed by the Lac du Flambeau Police Department so that they could enforce state criminal law violations by non-Indians on the Lac du Flambeau Reservation and provide backup assistance elsewhere in the county upon request of the sheriff. Another concern was the fact that although tribal law enforcement officers complete the same initial training and retraining as do other law enforcement officers, there is no mechanism in state statutes for certifying the tribal officers as being qualified to be law enforcement officers, as are other law enforcement officers, under s. 165.85 (4) (b) 1, Stats. The final concern raised by the Band was that tribal law enforcement officers could not have access to the state criminal identification system (known as the TIME system) in s. 165.83, Stats., because tribal law enforcement agencies do not meet the definition of "law enforcement agency" in s. 165.83 (1) (b), Stats. Only agencies meeting that definition have access to the TIME system. Deputized tribal officers may currently access the system only through the county sheriff's department.

The Lac du Flambeau Band asked Representative Holperin to sponsor legislation to address these concerns. Representative Holperin introduced 1991 Assembly Bill 1069, relating to certification of tribal police officers, near the end of the 1991-93 Legislative Session, which was not enacted due to time constraints. This session, he agreed that the AISC should review the issues raised by the Band and develop any legislative recommendations it deemed appropriate.

Since the time of the initial discussions between the Lac du Flambeau Band and Representative Holperin, a new sheriff has been elected in Vilas County who has deputized the Lac du Flambeau tribal police officers to act as county deputy sheriffs. However, the Band is concerned that this is a stopgap measure and that there is a potential for a return to the situation which existed prior to the election of the current Vilas County Sheriff. Therefore, the Band asked the AISC to consider developing legislation to address this concern, as well as the concerns relating to state certification of tribal law enforcement officers and the access of those officers to the TIME system. Several Vilas County elected officials spoke in support of the Band's request at the August 17, 1993 AISC meeting.

B. DESCRIPTION OF ASSEMBLY BILL 1198

With regard to law enforcement and arrest powers, Assembly Bill 1198 provides that a tribal law enforcement officer who meets specified requirements is granted the same powers and duties to enforce state laws and to make arrests for violations of those laws that sheriffs have. The enforcement and arrest powers granted to tribal officers generally may be exercised only on reservation or trust lands of the tribe that employs the officer. However, a tribal officer may pursue a fleeing offender out of the officer's jurisdictional area and may transport an arrested offender to a county jail or other detention facility in the county where the arrest occurred or to another jail or detention facility agreed upon by the tribe and the county in which the arrest occurred.

The requirements a tribal officer must meet in order to exercise these powers are: (1) successfully completing state law enforcement training and annual recertification training; (2) meeting the various employment qualifications for law enforcement officers established by the Law Enforcement Standards Board by rule; and (3) agreeing to accept the various duties of law enforcement officers set forth in state statutes.

The Bill provides that, generally, tribes are liable for the acts of their law enforcement officers while acting within the scope of employment and the state and its political subdivisions are not. The Bill further provides that no tribal officer may exercise the powers granted in the Bill unless the governing body of the tribe employing the officer adopts a resolution stating that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in state court of its liability or another resolution the DOJ determines will reasonably allow enforcement of the tribe's liability for actions of its officers.

The Bill provides that the language authorizing tribal law enforcement officers to exercise the enforcement and arrest powers on reservations and trust lands does not limit the current authority of a county sheriff, under s. 59.21 (5), Stats., to deputize an officer to exercise enforcement and arrest powers in a broader geographical area than that permitted by the Bill. The Bill also provides that if a sheriff's act of deputization grants a tribal officer lesser powers than are granted in the Bill, the deputization will not reduce the powers granted by the Bill.

With regard to access of tribal officers to the TIME system, the Bill creates a definition of "tribal law enforcement agency" and permits a tribal agency and its officers to have the same access to the system that other law enforcement agencies and officers have, if the tribe which created the tribal agency agrees that its agency will perform the duties placed on other law enforcement agencies in ss. 165.83 and 165.84, Stats. The Bill authorizes the DOJ to impose on tribal law enforcement agencies the fees it charges other law enforcement agencies for the use of the TIME system.

With regard to certification of tribal law enforcement officers, the Bill creates a definition of "tribal law enforcement officer" and provides that tribal law enforcement officers who meet the requirements for certification and agree to accept the duties of law enforcement officers set forth in various state statutes may become certified as law enforcement officers and may exercise the enforcement and arrest powers granted to state-certified tribal law enforcement officers by the Bill.

The Bill provides that a tribal law enforcement officer who, prior to enactment of the Bill, meets state training requirements but has not been certified does not have to repeat the training to become certified as a tribal law enforcement officer.

PS:DLL:las:kjf:rjl;kja;wu

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

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- (1) Became cochairperson (Senate President) upon enactment of 1993 Act 52, effective November 25, 1993.
- (2) Became cochairperson (designee of Assembly Speaker) following enactment of Act 52.
- (3) Appointed as a member of the Council (Senate President Pro Tempore) pursuant to Act 52.
- (4) Replaced Rep. Mary Panzer, who was elected to the state Senate on September 21, 1993.
- (5) Appointed to replace Rep. Peter Barca, who resigned from the Legislature on June 8, 1993.

AMERICAN INDIAN STUDY COMMITTEE

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STUDY ASSIGNMENT: The Committee is directed to study the problems and develop specific recommendations and legislative proposals relating to American Indians and the various Indian Tribes in this state.

Established biennially, pursuant to s. 13.83 (3), Stats.

14 MEMBERS: 8 Legislator Members; and 6 Public Members selected from names submitted by the Wisconsin Indian Tribes and the Great Lakes Intertribal Council. Chairperson, Secretary and members appointed by a July 24, 1992 mail ballot.

LEGISLATIVE COUNCIL STAFF: Pam Shannon, Senior Staff Attorney; David L. Lovell, Senior Analyst; and Roberta Lund, Support Staff.

- (1) Appointed by a February 25, 1993 mail ballot as Vice-Chairperson and to fill a Legislator membership on the Committee.
- (2) Appointed by a December 23, 1992 mail ballot to fill a Legislator membership on the Committee.
- (3) Appointed to replace Rep. John Medinger, whose Assembly term expired, by a February 25, 1993 mail ballot.
- (4) Appointed by a December 1, 1993 mail ballot to replace Glen Miller, who resigned from the Committee on November 2, 1993.
- (5) Appointed by a February 25, 1993 mail ballot to replace David Besaw, who resigned from the Committee on January 19, 1993.

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ASSIGNMENT: Established pursuant to s. 13.83 (3) (f), Stats., to assist the American Indian Study Committee in performing its statutory functions.

7 MEMBERS: One representative designated by the following Departments: Health and Social Services; Industry, Labor and Human Relations; Justice; Natural Resources; Public Instruction; Revenue; and Transportation.

COMMITTEE MATERIALS

Staff Materials

1. Memorandum, *Intergovernmental Agreements Between Municipalities and Indian Tribes or Bands* (June 28, 1993).
2. Memorandum, *Correspondence from Judge James B. Mohr, Vilas County Circuit Court* (August 3, 1993).
3. Memorandum, *Issues Relating to State Recognition of Tribal Registration of Boats, Snowmobiles, All-Terrain Vehicles and Motor Vehicles* (August 11, 1993; corrected August 13, 1993).
4. Table, *Selected Wisconsin Legislation of Interest to Indian Tribes, 1989-93* (September 14, 1993).
5. Memorandum, *Eligibility of Tribal Law Enforcement Officers to Participate in the Wisconsin State Retirement System* (November 22, 1993).
6. Memorandum, *WLCS: 376/1, Relating to Intergovernmental Cooperation Agreements and Units of Government Responsible for Recycling* (December 7, 1993).
7. Memorandum, *Law Enforcement on Indian Reservations* (December 8, 1993).

Other Materials

1. Letter from David J. Siegler, Tribal Attorney, Bad River Band of Lake Superior Chippewa Indians, regarding proposals for legislation through the American Indian Study Committee (July 15, 1992).
2. Testimony by David J. Siegler, Tribal Attorney, Bad River Band of Lake Superior Chippewa Indians, *Tribal Registration of Boats, Snowmobiles and All-Terrain Vehicles* (January 27, 1993).
3. Testimony by David J. Siegler, Tribal Attorney, Bad River Band of Lake Superior Chippewa Indians, *Intergovernmental Cooperative Agreements* (January 27, 1993).
4. Letter from Carl M. Rose, Sr., Town Chairman, Town of Sanborn, regarding intergovernmental cooperative agreements (January 25, 1993).

5. Letter from Peter McKeever, State Director, The Nature Conservancy, regarding intergovernmental cooperative agreements (January 25, 1993).
6. Letter from Michael A. Lutz, Attorney, Department of Natural Resources (DNR), to David Siegler, Tribal Attorney, Bad River Band of Lake Superior Chippewa Indians, regarding off-reservation reciprocity for tribal members (January 20, 1993).
7. Memorandum from Chuck Leveque, Attorney, DNR, to Judy Patton, Bureau of Community Assistance, DNR, *Designation of Indian Tribes as Responsible Units for Municipalities* (October 22, 1991).
8. Memorandum from Susan Hundt Bergan, Bureau of Solid and Hazardous Waste Management, DNR, to District Recycling Specialists, *Clarification of How the Recycling Statutes and Codes Affect Tribal Governments* (June 26, 1992).
9. Letter from Chairperson Boyle to George Meyer, Secretary, DNR, regarding tribal registration of boats, snowmobiles and all-terrain vehicles (May 5, 1993).
10. Letter from George Meyer, Secretary, DNR, to Chairperson Boyle regarding reciprocity for tribal registration programs (June 21, 1993).
11. Certification by State Law Enforcement Training Councils of the Training and Experience of Tribal Law Enforcement Officers, materials provided by Kathryn Tierney, Tribal Attorney, Bay Mills Indian Community, Brimley, Michigan (undated).
12. Form letter from Dennis Hanson, Director, Training and Standards Bureau, Department of Justice (DOJ), regarding certification by the Wisconsin Law Enforcement Standards Board (undated).
13. Letter from James E. Doyle, Attorney General, to the Governor, the Legislature and the American Indian Study Committee constituting the Annual Report of the DOJ regarding the county-tribal law enforcement program (February 9, 1993).
14. Letter from David J. Siegler, Tribal Attorney, Bad River Band of Lake Superior Chippewa Indians, regarding WLCS: 376/1, intergovernmental cooperation agreements (December 13, 1993).
15. Letter from Alfred Pyatskowitz, Chairman, American Indian Language and Culture Education Board (AILCEB) and attached annual report of the AILCEB (December 7, 1993).
16. Letter from William J. Erpenbach, Director, Bureau for Educational Equity Programs, Department of Public Instruction, to Chairperson Boyle, regarding recruitment for an education consultant position (December 9, 1993).