



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6468

TRIBAL POLICE

**House Bill 4516 (Substitute H-1)
First Analysis (5-4-93)**

**Sponsor: Rep. Jim McBryde
Committee: Judiciary**

THE APPARENT PROBLEM:

To act as a police officer and enforce the laws of this state, a person must be employed by the state or a local unit of government and must be certified under the Michigan Law Enforcement Training Council Act, which provides for minimum employment standards for police officers. The training council created under the act establishes specific standards in accordance with general requirements laid out by the act.

The act's certification requirements have posed a problem for tribal police officers and the nearby police agencies that sometimes need their help. While many tribal police officers have received training under federal programs, at least half of those in Michigan are reported to have received training under the training council act. However, because the act does not recognize tribal employment, a Michigan-certified officer employed by one of the tribes loses his or her certification after one year.

The lack of certification has raised some troubling issues. Questions of jurisdiction involving Native Americans and reservation lands can be complex; jurisdiction depends on whose law is being enforced, where the law is being enforced, who is doing the enforcing, and against whom the law is being enforced. Generally speaking, however, a tribal law enforcement officer's authority stops at the reservation boundaries; even within reservation boundaries, a tribal officer who attempts to arrest or even detain a non-Indian risks exceeding his or her legal authority.

Thus, when a tribal officer encounters a disorderly person at a casino or a drunk driver on reservation roads, he or she in theory must ascertain whether the person is an Indian, and if not, must await assistance from local law enforcement personnel. In practice, the long distances involved in many reservation areas, particularly the Upper Peninsula, make waiting for a local sheriff's deputy problematic. While it appears that no one has yet

successfully challenged a tribal arrest, many fear it is only a matter of time before it happens.

Conversely, sometimes local law enforcement agencies or the state police seek assistance from nearby tribal police officers, which also raises questions of the tribal officers' legal authority. However, when tribal officers participate in an off-reservation manhunt, for example, not only is their arrest authority in doubt, but so is their insurance coverage. If a tribal officer is injured, it is not clear that the law enforcement agency's insurance company would honor a claim.

There seems to be little or no dispute over the qualifications and professionalism of tribal officers. What is needed, many say, is legislation that would recognize tribal officers and tribal employment under the law enforcement training council act.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Law Enforcement Officers Training Council Act to extend the act to tribal police officers acting as state or local law enforcement officers. The definition of "police officer" and "law enforcement officer" would include a law enforcement officer of a Michigan Indian tribe who was appointed to serve as a member of a police force or other organization of a city, county, township, village, or of the state, and who was responsible for crime prevention and detection and enforcement of the general criminal laws of Michigan.

A tribal officer acting under a state or local appointment would have to comply with the minimum standards established by the training council. The council would have to publish standards with due consideration to varying factors and special requirements of local police agencies relative to acceptance of basic police training and law enforcement experience received by a person if

House Bill 4516 (5-4-93)

that person was a current or former tribal police officer who had successfully completed either of the following:

****** a basic police training course in another state or through a federally operated police training school that was sufficient to fulfill in part the minimum employment standards required by federal law to be appointed as a law enforcement officer of a police force of a Michigan Indian tribe; or,

****** a basic police training course at a police training school certified under the act or a pre-service training program established under the act and passed an examination offered under the act.

A tribal police officer who successfully completed an advanced in-service training program would be eligible to have that in-service training certified under the act in the same manner as a law enforcement officer.

MCL 28.602 and 28.609

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications. (5-3-93)

ARGUMENTS:

For:

The bill would open the way for state certification of tribal police officers, thus enabling them to enforce Michigan law both on and off the reservation. Under the bill, the training council would promulgate rules setting forth the standards for tribal officers and their training, and, upon deputization or other appointment by local nontribal authorities, a tribal officer would be a police officer under Michigan law. Questions of proper jurisdiction would be answered, criminal defendants' jurisdictional challenges would be forestalled, and false arrest lawsuits would be avoided. The bill would further foster the good working relationships that already exist between tribal police and other law enforcement agencies, and promote more effective law enforcement.

Against:

The bill proposes a convoluted means to its purported end. If the adequacy of the training of tribal officers is not at issue, then it is unclear why the bill cannot adopt a simpler approach. Either

tribal officers could simply be accepted as police officers for the purposes of Michigan law, or existing training standards could be extended to tribal officers in conjunction with recognizing tribal employment as police employment. As it stands, the bill not only would require tribal officer standards to be promulgated separately, but it also would require a tribal officer to have some sort of local appointment before being able to enforce Michigan law. Tribal officers deserve and want to be able to be treated like any other law enforcement officers; they should not have to be deputized before being able to arrest drunk drivers on the reservation.

Against:

If tribal officers are to be recognized under Michigan law, then there should be some sort of reciprocity requiring that Michigan officers be recognized under tribal law.

Response:

It may be that such a provision would be outside the scope of the bill, or even state statute in general. Matters of tribal law enforcement may have to be left to the tribes and federal law to resolve.

POSITIONS:

The Department of State Police supports the bill. (5-3-93)

The Michigan Law Enforcement Officers Training Council supports the bill. (4-27-93)

The Fraternal Order of Police supports the bill. (5-3-93)

The Michigan Sheriffs Association supports the bill with an amendment to provide for tribal recognition of Michigan-certified officers. (5-3-93)

The following Indian communities support legislation that will provide for certification of tribal police officers (4-30-93):

The Bay Mills Indian Community
The Hannahville Indian Community
The Lac Vieux Desert Band of Lake Superior Chippewa
The Sault Ste. Marie Tribe of Chippewa Indians

The following law enforcement agencies wrote letters in support of the original bill:

The Isabella County Sheriff's Department

**The Leelanau County Sheriff's Department
The Menominee County Sheriff's Department
The Sheriff of Gogebic County
The Village of Baraga Police Department**

House Bill 4516 (5-4-93)