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TRIBAL POLICE

House Bill 4516 as enrolled
Second Analysis (8-15-94)

Sponsor: Rep. Jim McBryde
House Committee: Judiciary
Senate 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 tribal officer who met certain criteria, including certification under the act and deputization or appointment by state or local authorities.

For a tribal officer to be empowered to act as a peace officer under Michigan law, he or she would have to be certified under the act, plus be either deputized or appointed by state or local authorities. That deputization or appointment would have to be made under a written contract between the appointing authority and the tribal government, and that contract would include whatever terms the appointing authority required. This written contract

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would have to be incorporated into a self-determination contract, grant agreement, or cooperative agreement made between the tribal government and federal authorities under the federal Indian Self-Determination and Education Assistance Act.

The law enforcement officers training council would have to publish certification standards for tribal officers 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 tribal officer who had been a tribal officer for at least one year, and who had successfully completed basic police training in another state or through a federally-operated police training school that was sufficient to meet federal standards for appointment as tribal police officer.

MCL 28.602 and 28.609

FISCAL IMPLICATIONS:

The Senate Fiscal Agency says that the bill would have no fiscal impact on state or local government. (4-28-94)

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 could be a peace 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.