

INDIAN COUNTRY LAW ENFORCEMENT AND COOPERATIVE PUBLIC SAFETY AGREEMENTS

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FAST FACTS:

- There are 12 federally recognized Indian tribes, 10 of which have police departments.
- The Urban Cooperation Act authorizes local governments to enter into public safety cooperative agreements with Indian tribes.

Jurisdiction in Indian country is complicated by federal laws, policies, and court decisions. Police officers in Indian country are asked to navigate a formidable body of law to determine what authority they may wield in a variety of situations. Officers, who must treat every routine traffic stop as a potentially life-threatening situation, must consider the location of an alleged crime, their current location, the political identity of the alleged perpetrator, the political identity of the alleged victim, and the nature of the alleged crime before deciding what action, if any, they are authorized to take.

Many agencies have attempted to ameliorate the problem of providing effective law enforcement in Indian country by entering into cooperative agreements with surrounding jurisdictions. These agreements expand the authority of officers who would otherwise be unable to enforce certain laws against certain individuals. Cooperative arrangements, including deputization, cross-deputization, or mutual aid agreements, have proven instrumental in Indian country, allowing officers to more effectively protect the public from crime.

All questions relating to Indian country criminal jurisdiction must begin with determining whether the alleged crime occurred in Indian country.¹ When the site of a crime is not Indian country, ordinary rules regarding state and federal criminal jurisdiction apply. Therefore, an officer must first determine whether he or she is operating in Indian country. While this appears straightforward, the allotment of Indian lands in Michigan and the subsequent settlement of large portions of reservation lands by non-Indians have created a confusing “patchwork” of land ownership.

This article details the most effective solution to the jurisdictional maze that exists in Michigan’s Indian country:² cooperative public safety agreements between tribal and local law enforcement jurisdictions.

Overview of the Contours of Criminal Jurisdiction in Indian Country

The primary Michigan Indian country law enforcement jurisdictions are federal and tribal. Tribal governments have authority to prosecute their own citizens and other nonmember Indians,³ but they cannot prosecute non-Indians.⁴ Several federal statutes authorizing federal criminal jurisdiction in Indian country fill the gaps. The Indian Country Crimes Act, enacted in 1817, authorizes federal punishment for all crimes committed by non-Indians in Indian country and some crimes committed by Indians against non-Indians.⁵ The Assimilative Crimes Act, enacted in 1825, fills

the gaps in criminal law that would otherwise exist in exclusively federal enclaves such as Indian country by “assimilating” state law as federal law.⁶ The Major Crimes Act, enacted in 1885, provides for federal jurisdiction over an Indian who commits one of several enumerated crimes, including murder, manslaughter, kidnapping, maiming, incest, assault with a dangerous weapon, assault

resulting in serious bodily injury, assault against an individual under the age of 16, arson, burglary, robbery, and other crimes.⁷

Congress in the Trade and Intercourse Acts⁸ and later the Supreme Court⁹ have long enforced the general rule that state governments have no jurisdiction in Indian country unless Congress has explicitly authorized state jurisdiction. The prosecution of crimes committed by non-Indians against persons and property in Indian country is within the exclusive jurisdiction of the federal government.¹⁰ State governments have jurisdiction over crimes committed between non-Indians.¹¹

The overlapping jurisdictional authority of these various agencies can compound the task of enforcing criminal jurisdiction on Indian land. For example, a tribal law enforcement officer has no authority to arrest a non-Indian violating state law on the reservation. Furthermore, state officers cannot respond to calls involving Indians on tribal land. Additionally, tribal law enforcement officers cannot enforce federal laws on reservation land without special authority.

In all these instances, an officer attempting to exercise authority outside his or her jurisdiction merely has the authority to stop and detain a suspect.¹² Finally, exacerbating the limitations on tribal and state law enforcement authority is the relative incapacity of the federal government to prosecute crimes in Indian country. A *Denver Post* reporter concluded that “[b]etween 1997 and 2006, federal prosecutors rejected nearly two-thirds of the reservation cases brought to them by FBI and Bureau of Indian Affairs investigators, more than twice the rejection rate for all federally prosecuted crime.”¹³ However, the United States Attorney’s Office for the Western District of Michigan, which has jurisdiction over 11 of the 12 federally recognized tribes in Michigan, appears to be a leader in prosecuting Indian country crime.

Cooperative Public Safety Agreements

To help remedy these jurisdictional gaps, many agencies have entered into agreements that prescribe terms for shared authority

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in and around Indian country. Deputization agreements give tribal, federal, state, or city law enforcement officials power to enforce laws outside their own jurisdictions regardless of the identity of the perpetrator, thus simplifying the exercise of criminal jurisdiction.

Cross-deputization agreements are frequently the product of intense and complicated negotiations between local and tribal authorities. Often, many barriers arise during negotiations. It appears that every element of an agreement mentioned previously can become a barrier, although some elements of the agreement are more contentious than others. Some of the more adversarial elements are the geographical reach of the agreements, the jurisdiction of the parties, liability of officers performing under the agreements, and sovereign immunity.¹⁴ For example, the law enforcement agreement between the Bay Mills Indian Community and Chippewa County provides only for the deputization of tribal officers to enforce state law and does not authorize county sheriff officers to enter tribal land to enforce tribal or state law.

Many tribes seeking to enter into cooperative agreements with local jurisdictions must demonstrate that both the tribe and the local government have authority to enter into such an agreement. In 1973, Michigan Attorney General Frank Kelley opined that “[s]tate, county and local police forces may freely enter into inter-agency arrangements with Indian police units and may engage in other kinds of cooperative efforts which may seem advisable and practicable.”¹⁵ Michigan law now provides specific authority for these agreements in the Urban Cooperation Act, as amended in 2002.¹⁶ One of the first modern law enforcement cooperative agreements, between Leelanau County and the Grand Traverse Band of Ottawa and Chippewa Indians, negotiated between Sheriff Michael Oltersdorf and Tribal General Counsel John Petoskey in 1997, serves as a model for agreements between tribes and local governments.¹⁷

Another example of a tribal and local government cooperation is the agreement between the Little Traverse Bay Bands of Odawa Indians (LTBB) and their neighboring counties of Charlevoix and Emmet. Before entering into a cross-deputization agreement with the counties of Emmet and Charlevoix, the LTBB Tribal Council had passed a resolution allowing non-tribal law enforcement to come into Indian country in the event of an emergency. To broaden the jurisdictional capabilities of tribal police and close

jurisdictional gaps, LTBB Chief of Police Jeff Cobe approached law enforcement offices in counties around tribal land in the late 1990s to negotiate a cross-deputization agreement. The idea was to create seamless law enforcement in and around LTBB lands.

Initially, the tribe pushed for an agreement that would give its officers authority to enforce state laws within its reservation boundaries. However, this became a major stumbling block in the negotiations. After agreeing to put aside the issue of reservation boundaries, there were a series of meetings between the tribal police department, the tribal attorney, the county sheriff, and the prosecutor. In their final form, the agreements limit the geographic scope to LTBB trust lands. Despite this concession, all parties were pleased with the outcome of the negotiations.¹⁸

At this time, all law enforcement agreements in Michigan are entered into at the local level. The following section analyzes the possible benefits of a statewide solution and the impediments to such agreements.

A Statewide Solution?

One considerable advantage for tribes entering into statewide agreements with the state police is the unlimited duration of such agreements. County sheriffs are elected to four-year terms only. As a consequence, officers deputized by a county sheriff must be sworn in again when a new sheriff takes office. The new sheriff could simply refuse to honor the previous agreement. Administratively, it is also easier to have one agreement on a state level than multiple agreements with various county sheriffs.

In addition, a statewide solution would provide backup authority for tribal officers to enforce state laws against non-Indians in the tribe's enforcement area in the event that the local or county sheriff is uncooperative. For political reasons or general distrust, a sheriff may decline to deputize a tribal official. If a sheriff declines to deputize tribal officers, they have no authority to enforce state laws against non-Indians. Thus, a statewide agreement could ensure that tribal authority is insulated against an individual sheriff's distrust or dislike of tribal officials.

Law enforcement agencies in Michigan are generally eager to cooperate with one another to provide optimal law enforcement for their citizens. However, one impediment to statewide agreements has been the possible liability issues these agreements can

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create. The Attorney General's Office, which protects state sheriffs regarding these issues, has identified several concerns regarding statewide agreements with tribal police. These concerns mirror the impediments detailed above, suggesting they can be overcome through negotiations between the state and tribes. The concerns include the constitutionality under the Michigan Constitution of deputizing tribal officers, the training or qualification requirements of deputized tribal officers, the liability of the sheriffs regarding conduct of tribal officers, and the command and control of tribal officers acting as special deputies.

Attorney General Kelley's 1973 opinion on the legality of a statewide agreement remains valid. State statutes regulate the training and qualification of tribal police officers in cooperative agreements. Solutions to other impediments can also be negotiated, as has happened many times locally, or addressed by the state legislature.

The advantage of a statewide solution for Indian country law enforcement is a question for all 12 tribal sovereigns and the state of Michigan. Despite the apparent authority in Michigan of state-tribal agreements as evidenced by the attorney general opinion and statutes, the issue of a state police agreement or a state legislative fix has not been revisited for many years. This could be due to the perception that the solutions at the local level are working for tribal communities. However, tribes have options if they decide to revisit the issue, including pursuing a legislative fix, opening negotiations with the state police, and addressing the issue with the governor's office or at the annual summit. ■



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THE ADVANTAGE OF A STATEWIDE SOLUTION FOR INDIAN COUNTRY LAW ENFORCEMENT IS A QUESTION FOR ALL 12 TRIBAL SOVEREIGNS AND THE STATE OF MICHIGAN.

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FOOTNOTES

1. "Indian country" is defined in 18 USC 1151.
2. Clinton, *Criminal jurisdiction over Indian lands: A journey through a jurisdictional maze*, 18 Ariz L R 503 (1976).
3. See, e.g., *United States v Lara*, 541 US 193; 124 S Ct 1628; 158 L Ed 2d 420 (2004); *United States v Wheeler*, 435 US 313; 98 S Ct 1079; 55 L Ed 2d 303 (1978).
4. See *Olliphant v Suquamish Indian Tribe*, 435 US 191; 98 S Ct 1011; 55 L Ed 2d 209 (1978).
5. 18 USC 1152.
6. 18 USC 13.
7. 18 USC 1153.
8. See Fletcher, *Trade and Intercourse Acts*, in 2 Encyclopedia of United States Indian Law and Policy (2009), pp 762-764.
9. See, e.g., *Worcester v Georgia*, 31 US 515; 8 L Ed 483 (1832).
10. 18 USC 1152.
11. See *United States v McBratney*, 104 US 621; 26 L Ed 869 (1881).
12. See, e.g., *Ortiz-Barraza v United States*, 512 F2d 1176, 1180 (CA 9, 1975); *State v Ryder*, 649 P2d 756 (NM App, 1982); *State v Schmuck*, 850 P2d 1332 (Wash, 1993).
13. Riley, *Promises, justice broken*, Denver Post, November 21, 2007, available at <http://www.denverpost.com/ci_7429560>. All websites cited in this article were accessed January 8, 2010.
14. May, *California Mediates Cross-Deputization*, Indian Country Today, December 26, 2001, available at <<http://www.indiancountrytoday.com/archive/28188679.html>>.
15. OAG, 1973-1974, No 4803 (October 29, 1973). Cf. OAG, 2003, No 7134 (May 21, 2003).
16. MCL 28.609 (setting authority of tribal police officers); MCL 124.502(e) (including "Indian tribes" in the definition of "public agency"); MCL 51.70 (authorizing sheriffs to appoint deputies at their pleasure).
17. Deputization agreement between the Grand Traverse Band of Ottawa and Chippewa Indians and the Sheriff of Leelanau County, available at <http://www.ncai.org/ncai/resource/agreements/mi_grand_traverse_deputization-3-19-1997.pdf>.
18. Interlocal Agreements for Deputization and Mutual Law Enforcement Assistance between the Little Traverse Bay Bands of Odawa Indians and the counties of Emmet and Charlevoix.