AN ACT

RELATING TO LAW ENFORCEMENT ON INDIAN RESERVATIONS;
AMENDING CHAPTER 51, TITLE 67, IDAHO CODE, BY THE
ADDITION OF A NEW SECTION, TO BE KNOWN AND DESIGNATED
AS SECTION 67-5104, IDAHO CODE; [REMAINDER OF TITLE TO
BE SUPPLIED]

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That chapter 51, title 67, Idaho Code, be,
and the same is hereby amended by the addition of a NEW
SECTION, to be known and designated as section 67-5104,
Idaho Code, and to read as follows:

67-5104. (1) This act may be cited and referred to as
the State and Indian Tribal Cooperative Law Enforcement
Act.
(2) As used in this section, the following terms shall
mean:
(a) “Agreement” shall mean such cooperative law
enforcement agreements between an individual Indian
tribe and a county sheriff as they may deem necessary
or advisable for enhancement and effective law
enforcement of state laws within the exterior
boundaries of the Indian tribal reservation.
(b) “Indian tribe” shall mean the individual
federally recognized Indian tribes in Idaho,
(specifically, the Coeur d’Alene Tribe, the Kootenai
Tribe of Idaho, the Nez Perce Tribe, the Shoshone-
Bannock Tribes of the Fort Hall Reservation, and the
Shoshone-Paiute Tribes of the Duck Valley
Reservation).
(c) “Local law enforcement agency” shall mean the
sheriff of a county with lands either wholly or in
part located within the exterior boundaries of the
reservation of an Indian tribe.
(d) “Tribal peace officer” shall mean an employee of a
police or law enforcement agency of an Indian tribe, whose
duties include and primarily consist of the prevention and
detection of crime, and the enforcement of traffic,
highway, and other laws relating to public offenses.
(3) It is the intent of the legislature to encourage
Indian tribes and local law enforcement agencies to
negotiate and enter into agreements that will enhance and improve the enforcement of Idaho state laws within the exterior boundaries of Indian tribal reservations within the state of Idaho. Such agreements may consist of such cooperative law enforcement agreements as the respective Indian tribe and the respective sheriffs having the primary duty of enforcing all penal provisions of any and all statutes of this state on lands within the exterior boundaries of the Indian tribal reservations may deem to be necessary or advisable. Nothing in this act shall be construed or deemed to limit, impair, or otherwise affect the ability of Indian tribes and local law enforcement agencies to enter into such cooperative law enforcement agreements within their respective jurisdictions.

(4) An Indian tribe may elect to permit the police or law enforcement agency of the respective Indian tribe to enforce laws of the state of Idaho relating to public offenses committed within the exterior boundaries of such Indian tribe’s reservation. Provided however, the election to permit the tribal police or law enforcement agency to enforce state law shall not be effective, except as follows:

(a) The Tribe making such election shall,

(i) one-hundred and eighty (180) days before the intended effective date of such election, give written notice to the sheriff, county commissioners and prosecuting attorney of each county with lands within the exterior boundaries of the Tribe’s reservation, in which county the tribe intends such election to be effective, and to the director of Idaho state police, that the Indian tribe will on such intended effective date permit and authorize its’ tribal peace officers to engage in the enforcement of state laws with reference to persons committing public offenses within the exterior boundaries of such Tribe’s reservation, in accordance with, and subject to, the provisions of this section; and

(ii) at the time of giving the notice set forth in subparagraph (i) of this paragraph, offer to enter into negotiation and execution of agreements with the sheriff and county commissioners and advising them of a date or
dates available to meet for such purpose, which initial date or dates shall not be more than thirty (30) days from the date of giving such notice, except by agreement of all parties. Thereafter, meetings and negotiations between the parties shall continue, as agreed between the parties, with the goal of achieving agreements, as defined herein, prior to the intended effective date of the election set forth in the paragraph (4)(a)(i) of this section. Provided however, the parties may agree, in writing, to extend the intended effective date of the notice of election provided herein.

(iii) To the extent that agreements entered into between the Indian tribe and the local law enforcement agency expressly enlarge, diminish or limit the authority granted to an Indian tribe, its’ tribal law enforcement agency or its’ tribal peace officers pursuant to this section or other state law, the terms of such agreements shall govern the authority of the tribal law enforcement agency and its’ tribal peace officers to enforce state laws within the exterior boundaries of the affected Indian reservation.

(b) Unless otherwise limited by agreement between the Indian Tribe and the local law enforcement agency, on or before the intended effective date of an Indian Tribe’s election as set forth in this section, or such extended time as may have been agreed between the parties, such election shall only be effective at such time as the Indian tribe shall:

(i) File with the county commissioners of each county with lands within the exterior boundaries of said reservation, proof of maintenance of comprehensive general liability insurance in the minimum amount of Two Million Dollars ($2,000,000) for any and all claims, losses, actions, and judgments arising out of the conduct of tribal peace officers resulting in damage to persons or property acting under authority granted in this section. Each county receiving the notice provided in subsection (a) hereof shall be a named insured on such policy, and such policy shall not be subject to
cancellation by the insurer without thirty days
(30) notice to the tribal government and each
named insured thereon. Failure of the Indian
tribe to maintain insurance as set forth herein
shall, on the effective date of cancellation or
expiration of the insurance required herein,
shall nullify the election by the Indian tribe
to enforce laws of the state of Idaho relating
to public offenses committed within the
exterior boundaries of such Indian tribe’s
reservation.

(ii) Each policy of insurance issued pursuant to
this chapter shall include a provision that the
insurance shall be available to satisfy
settlements or judgments arising from conduct
of tribal peace officers when engaged in the
enforcement of Idaho state laws, and that, to
the extent of policy coverage, neither the
Tribal government nor the insurance carrier
will raise a defense of sovereign immunity to
preclude an action for damages under state or
federal law, the determination of fault in a
civil action, or the payment of a settlement or
judgment arising from such conduct.

(5) If an Indian tribe has made the election to permit
such tribe’s police or law enforcement agency to enforce
laws of the state of Idaho relating to public offenses
committed within the exterior boundaries of such Indian
tribe’s reservation, on and after the effective date of
such election as provided herein, the Indian tribe’s tribal
peace officers shall have all authority and duties given by
Idaho law to peace officers of the state of Idaho, except
as limited by agreement between the Indian tribe and the
local law enforcement agency, only if:

(a) The tribal peace officer is the holder of a
certificate from the Idaho peace officers standards
and training council certifying that the employee has
satisfactorily completed the basic patrol academy
curriculum of the Idaho peace officer standards and
training council academy; and

(b) The tribal peace officer has not been decertified
by the Idaho peace officer standards and training
council, pursuant to chapter 51, title 19, Idaho Code.
A tribal peace officer authorized to enforce state laws under this section may only make an arrest in obedience to a warrant delivered to such officer, or such tribal peace officer may, without a warrant, arrest a person only:

(a) For a public offense committed or attempted in the officer’s presence;

(b) When a person arrested has committed a felony, although not in his presence;

(c) When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it; or

(d) When upon immediate response to a report of a commission of a public offense there is probable cause to believe, that the person arrested has committed a violation of section 18-902, Idaho Code (assault); section 18-903, Idaho Code (battery); section 18-918, Idaho Code (domestic assault or battery); section 18-7905, Idaho Code (first degree stalking); section 18-7906, Idaho Code (second degree stalking); section 39-6312, Idaho Code (violation of a protection order); or section 18-920, Idaho Code (violation of a no contact order).

The tribal peace officer making an arrest, with or without a warrant, for the commission of a public offense pursuant to statutes and laws of the state of Idaho, shall

(a) comply with all duties imposed on peace officers by the laws of the state of Idaho relating to arrest and custody, and the entitlement to judicial proceedings by or on behalf of the person arrested in a state court of competent jurisdiction;

(b) immediately notify the office of the sheriff of the county wherein the arrest occurred of

(i) the fact of the arrest and identity of the person arrested;

(ii) the offense for which the person was arrested; and
(iii) deliver the person arrested to the place designed by the sheriff within the county for booking and/or detention of such person.

(c) cooperate with investigative and judicial requirements related to prosecution of the arrested person as may be reasonably required by the respective county sheriff or prosecuting attorney, as the officers having the primary duty of enforcing penal provisions of Idaho state statutes and law.

(8) The authority granted to a tribal peace officer, pursuant to this section, shall not extend beyond the exterior boundaries of the Indian reservation. Provided, however, a tribal peace officer may, without unreasonable delay, pursue a person outside the boundaries of the Indian reservation, and arrest, hold in custody, or issue a citation to such person if such person committed a public offense within the exterior boundaries of the reservation in presence of the tribal police officer.

(9) A copy of any citation or notice of infraction issued, or any incident report taken, by a tribal peace officer in the exercise of the officer’s authority pursuant to this section shall be submitted within two (2) days following the action to the sheriff of the county in which the public offense or infraction occurred.

(10) A tribal peace officer acting pursuant to the provisions of this section shall not be considered to be an employee of the state of Idaho nor of any county or city situated within the exterior boundaries of the Indian reservation. The state of Idaho and its individual employees, and a county or city, and the individual employees thereof, shall not be liable for the authorization of tribal peace officers pursuant to this section, nor for the negligence or misconduct of any tribal peace officer. The authorization of tribal peace officers under this section to permit such tribe’s police or law enforcement agency to enforce laws of the state of Idaho relating to public offenses committed within the exterior boundaries of such Indian tribe’s reservation shall not be deemed to have been a non-delegable duty of the state of Idaho or any local government therein.

(11) Nothing contained in this section shall be construed or deemed to impair or affect the existing status
and sovereignty of federally recognized Indian tribes in
the state of Idaho as established under the laws of the
United States.

(12) Nothing contained in this section shall be
construed or deemed to limit, impair, or otherwise affect
the existing authority under state or federal law of state
or local law enforcement officers to enforce state law
within the exterior boundaries of an Indian reservation.
Authority granted an Indian tribe by virtue of this section
shall be concurrent only (and not exclusive) with authority
in the same matters existing in state or local government.

(13) An Indian tribe which has made the election
provided in paragraph 4(a) of this section, and which
election has become effective, may, upon thirty (30) days
written notice to the sheriff of a county with lands within
the exterior boundaries of an Indian tribal reservation,
terminate the authority of its tribal peace officers or
tribal law enforcement agency to enforce penal laws of the
state of Idaho within the exterior boundaries of the Indian
tribal reservation and within the county wherein such
sheriff has jurisdiction.

SECTION 2. That section 19-5101, Idaho Code, be, and
the same is hereby amended to read as follows:

19-5101. Definitions. - As used in this act:

(a) "Council" means the Idaho peace officer standards
and training council.

(b) "County detention officer" means an employee in a
county jail who is responsible for the safety, care,
protection, and monitoring of county jail inmates.

(c) "Law enforcement" means any and all activities
pertaining to crime prevention or reduction and law
enforcement, including police, courts, prosecution,
corrections, probation, rehabilitation, and juvenile
delinquency.

(d) "Peace officer" means any employee of a police or
law enforcement agency which is a part of or administered
by the state or any political subdivision thereof and whose
duties include and primarily consist of the prevention and
detection of crime and the enforcement of penal, traffic or
highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has (i) been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho or (ii) is an employee of a police or law enforcement agency of a federally recognized Indian tribe which has elected, pursuant to section 67-5104, Idaho Code, to permit the police or law enforcement agency of the Indian tribe to enforce laws of the state of Idaho relating to public offenses committed within the exterior boundaries of such Indian tribe’s reservation or (iii) is an employee of a police or law enforcement agency of a federally recognized Indian tribe that has entered into cooperative law enforcement agreement with a county sheriff relating to the enforcement of state and/or tribal laws within the exterior boundaries of the Indian tribe’s reservation.

(e) "Political subdivision" means any city or county.