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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

1 negotiate and enter into agreements that will enhance and
2 improve the enforcement of Idaho state laws within the
3 exterior boundaries of Indian tribal reservations within
4 the state of Idaho. Such agreements may consist of such
5 cooperative law enforcement agreements as the respective
6 Indian tribe and the respective sheriffs having the primary
7 duty of enforcing all penal provisions of any and all
8 statutes of this state on lands within the exterior
9 boundaries of the Indian tribal reservations may deem to be
10 necessary or advisable. Nothing in this act shall be
11 construed or deemed to limit, impair, or otherwise affect
12 the ability of Indian tribes and local law enforcement
13 agencies to enter into such cooperative law enforcement
14 agreements within their respective jurisdictions.

15
16 (4) An Indian tribe may elect to permit the police or
17 law enforcement agency of the respective Indian tribe to
18 enforce laws of the state of Idaho relating to public
19 offenses committed within the exterior boundaries of such
20 Indian tribe's reservation. Provided however, the election
21 to permit the tribal police or law enforcement agency to
22 enforce state law shall not be effective, except as
23 follows:

24
25 (a) The Tribe making such election shall,

26
27 (i) one-hundred and eighty (180) days before the
28 intended effective date of such election, give
29 written notice to the sheriff, county
30 commissioners and prosecuting attorney of each
31 county with lands within the exterior boundaries
32 of the Tribe's reservation, in which county the
33 tribe intends such election to be effective, and
34 to the director of Idaho state police, that the
35 Indian tribe will on such intended effective date
36 permit and authorize its' tribal peace officers
37 to engage in the enforcement of state laws with
38 reference to persons committing public offenses
39 within the exterior boundaries of such Tribe's
40 reservation, in accordance with, and subject to,
41 the provisions of this section; and

42
43 (ii) at the time of giving the notice set forth
44 in subparagraph (i) of this paragraph, offer to
45 enter into negotiation and execution of
46 agreements with the sheriff and county
47 commissioners and advising them of a date or

1 dates available to meet for such purpose, which
2 initial date or dates shall not be more than
3 thirty (30) days from the date of giving such
4 notice, except by agreement of all parties.
5 Thereafter, meetings and negotiations between the
6 parties shall continue, as agreed between the
7 parties, with the goal of achieving agreements,
8 as defined herein, prior to the intended
9 effective date of the election set forth in the
10 paragraph (4)(a)(i) of this section. Provided
11 however, the parties may agree, in writing, to
12 extend the intended effective date of the notice
13 of election provided herein.

14
15 (iii) To the extent that agreements entered into
16 between the Indian tribe and the local law
17 enforcement agency expressly enlarge, diminish or
18 limit the authority granted to an Indian tribe,
19 its' tribal law enforcement agency or its' tribal
20 peace officers pursuant to this section or other
21 state law, the terms of such agreements shall
22 govern the authority of the tribal law
23 enforcement agency and its' tribal peace officers
24 to enforce state laws within the exterior
25 boundaries of the affected Indian reservation.

26
27 (b) Unless otherwise limited by agreement between the
28 Indian Tribe and the local law enforcement agency, on
29 or before the intended effective date of an Indian
30 Tribe's election as set forth in this section, or such
31 extended time as may have been agreed between the
32 parties, such election shall only be effective at such
33 time as the Indian tribe shall:

34
35 (i) File with the county commissioners of each
36 county with lands within the exterior
37 boundaries of said reservation, proof of
38 maintenance of comprehensive general liability
39 insurance in the minimum amount of Two Million
40 Dollars (\$2,000,000) for any and all claims,
41 losses, actions, and judgments arising out of
42 the conduct of tribal peace officers resulting
43 in damage to persons or property acting under
44 authority granted in this section. Each county
45 receiving the notice provided in subsection (a)
46 hereof shall be a named insured on such policy,
47 and such policy shall not be subject to

1 cancellation by the insurer without thirty days
2 (30) notice to the tribal government and each
3 named insured thereon. Failure of the Indian
4 tribe to maintain insurance as set forth herein
5 shall, on the effective date of cancellation or
6 expiration of the insurance required herein,
7 shall nullify the election by the Indian tribe
8 to enforce laws of the state of Idaho relating
9 to public offenses committed within the
10 exterior boundaries of such Indian tribe's
11 reservation.

12
13 (ii) Each policy of insurance issued pursuant to
14 this chapter shall include a provision that the
15 insurance shall be available to satisfy
16 settlements or judgments arising from conduct
17 of tribal peace officers when engaged in the
18 enforcement of Idaho state laws, and that, to
19 the extent of policy coverage, neither the
20 Tribal government nor the insurance carrier
21 will raise a defense of sovereign immunity to
22 preclude an action for damages under state or
23 federal law, the determination of fault in a
24 civil action, or the payment of a settlement or
25 judgment arising from such conduct.

26
27 (5) If an Indian tribe has made the election to permit
28 such tribe's police or law enforcement agency to enforce
29 laws of the state of Idaho relating to public offenses
30 committed within the exterior boundaries of such Indian
31 tribe's reservation, on and after the effective date of
32 such election as provided herein, the Indian tribe's tribal
33 peace officers shall have all authority and duties given by
34 Idaho law to peace officers of the state of Idaho, except
35 as limited by agreement between the Indian tribe and the
36 local law enforcement agency, only if:

37
38 (a) The tribal peace officer is the holder of a
39 certificate from the Idaho peace officers standards
40 and training council certifying that the employee has
41 satisfactorily completed the basic patrol academy
42 curriculum of the Idaho peace officer standards and
43 training council academy; and

44
45 (b) The tribal peace officer has not been decertified
46 by the Idaho peace officer standards and training
47 council, pursuant to chapter 51, title 19, Idaho Code.

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1 (6) A tribal peace officer authorized to enforce state
2 laws under this section may only make an arrest in
3 obedience to a warrant delivered to such officer, or such
4 tribal peace officer may, without a warrant, arrest a
5 person only:

6 (a) For a public offense committed or attempted in the
7 officer's presence;

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

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

13 (d) When upon immediate response to a report of a
14 commission of a public offense there is probable cause
15 to believe, that the person arrested has committed a
16 violation of section 18-902, Idaho Code (assault);
17 section 18-903, Idaho Code (battery); section 18-918,
18 Idaho Code (domestic assault or battery); section 18-
19 7905, Idaho Code (first degree stalking); section 18-
20 7906, Idaho Code (second degree stalking); section 39-
21 6312, Idaho Code (violation of a protection order); or
22 section 18-920, Idaho Code (violation of a no contact
23 order).

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

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

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

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

36 (ii) the offense for which the person was
37 arrested; and

1 (iii) deliver the person arrested to the place
2 designated by the sheriff within the county for
3 booking and/or detention of such person.

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

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

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

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

41 (11) Nothing contained in this section shall be
42 construed or deemed to impair or affect the existing status

DRAFT ONLY – [For Discussion]

1 and sovereignty of federally recognized Indian tribes in
2 the state of Idaho as established under the laws of the
3 United States.

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

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

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

24 19-5101. Definitions. - As used in this act:

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

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

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

35 (d) "Peace officer" means any employee of a police or
36 law enforcement agency which is a part of or administered
37 by the state or any political subdivision thereof and whose
38 duties include and primarily consist of the prevention and
39 detection of crime and the enforcement of penal, traffic or

1 highway laws of this state or any political subdivision.
2 "Peace officer" also means an employee of a police or law
3 enforcement agency of a federally recognized Indian tribe
4 who has satisfactorily completed the peace officer
5 standards and training academy and has (i) been deputized
6 by a sheriff of a county or a chief of police of a city of
7 the state of Idaho or (ii) is an employee of a police or
8 law enforcement agency of a federally recognized Indian
9 tribe which has elected, pursuant to section 67-5104, Idaho
10 Code, to permit the police or law enforcement agency of the
11 Indian tribe to enforce laws of the state of Idaho relating
12 to public offenses committed within the exterior boundaries
13 of such Indian tribe's reservation or (iii) is an employee
14 of a police or law enforcement agency of a federally
15 recognized Indian tribe that has entered into cooperative
16 law enforcement agreement with a county sheriff relating to
17 the enforcement of state and/or tribal laws within the
18 exterior boundaries of the Indian tribe's reservation.

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