

Testimony Before The Senate Judiciary Committee On February 19, 2015

In Support of Senate Bill 343

For The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians

Robert Garcia, Chairman

I am chairman of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. SB 343 repeals the sunset clause currently threatening continuation in force of SB 412 (2011). We respectfully ask you to pass SB 343.

Thank you for scheduling this important legislation for hearing and work session. SB 412 became a national model for improving public safety in Indian Country in part because of the exacting scrutiny applied during the 2011 regular session of the Legislature.

The effort to wring maximum public benefit from the legislation did not end with passage of SB 412. Tribal police and their public safety partners have continued since 2011 to examine and test the legislation. During that span, tribes and their law enforcement partners convened two conferences with the express intent of bringing to the fore any difficulties that had arisen in implementation of the 2011 Act. Tribes also commissioned a tribe-by-tribe examination of each tribe's implementation of the Act. The Congressionally-appointed Indian Law and Order Commission received testimony about SB 412 in a field hearing conducted in Portland, and the Commission's final report commends SB 412 as a model for consideration by other state legislatures and the tribes situated in those states.

The takeaway lesson from our shared experience since 2011: SB 412 has delivered on all of its promise. None of the feared difficulties have materialized.

This success is reflected in the favorable re-alignment of interested parties. The Association of Oregon Counties has endorsed SB 343 and the Oregon State Sheriff's Association has announced that it will be neutral. Attorney General Rosenblum has indicated through her staff that she supports the legislation (her predecessor took no position in 2011). Coos County District Attorney Paul Frasier has authorized us to report that he favors SB 343, though the Oregon District Attorney's Association has decided not to take a position one way or the other.

No state or local funds are available to my tribe to subsidize the cost of our Police Department. In comparison to the total cost of operating the department, my tribe receives only a small amount of federal grant funds. The majority of the cost of the department is currently paid from the tribe's other revenues -- from funds that in the State budget system would be characterized as "General Funds."

Like a city or county, the Tribe invests resources in a police department primarily to protect and serve its own jurisdiction. But criminals do not respect the tribe's boundaries any

more than they respect the boundary between a city and a county or between two counties. A person driving under the influence of intoxicants on Highway 101 is just as likely to kill or maim a member of the Tribe as she is to crash into a car driven by someone who is not a tribal member.

SB 412 has been a success for the tribe and a success for the surrounding community. We request your support for repeal of the sunset clause that would, unless repealed, eliminate the legal foundation for that success.

Attachments submitted with this testimony:

- A. Agenda for first SB 412 Implementation Conference
- B. Agenda for second SB 412 Implementation Conference
- C. Memorandum from DPSST (statistical report on SB 412)
- D. Tribe-by-Tribe study of SB 412 Implementation: Authored by Shelby Rihala, JD.
- E. Excerpts from the Final Report of the Indian Law and Order Commission.

SB 412 Implementation Conference Agenda

THURSDAY, JANUARY 12

- 12:30p **Registration**
- 1:00p **Welcome**
CTGR Tribal Chairwoman Cheryle Kennedy and Polk County Sheriff Bob Wolfe
- 1:15p **DPSST Overview**
Marilyn Lorance, DPSST Standards and Certification Program Manager
- 2:00p **Issues in Federal Law Enforcement**
Tim Simmons, Assistant U.S. Attorney
- 2:45p **Break**
- 3:00p **Sharing Criminal Intelligence**
Ken Reuben, Oregon DOJ Criminal Justice Division Special Agent-in-Charge
- 3:45p **Responding to Cultural Resource Crimes**
Agnes Castronuevo, CTCLUSI Archaeologist; Nancy Nelson, State Parks Archaeologist; and Tim Simmons, Assistant U.S. Attorney
- 4:30p **Reception** (no host bar)

FRIDAY, JANUARY 13

- 8:00a **Breakfast**
- 9:00a **Effectively Using and Managing Cooperative Agreements**
Wasco County Sheriff Rick Eiesland; Rob Lothrop, CRITFC Policy Dept Manager; and Captain Jerry Ekker, CRITFE
- 9:45a **Tips for Working on Tribal Lands**
Stephanie Striffler, Assistant Attorney General; Tim Addleman, CTUIR Police Chief; and Thomas Woolworth, BIA Office of Justice Services Special Agent-in-Charge
- 10:30a **Break**
- 10:45a **Legislative Panel on Public Safety ***
Senator Ted Ferrioli, Senator Floyd Prozanski, Co-Speaker Arnie Roblan, and Representative Andy Olson
- 12:00p **Lunch and Keynote Address ***
Oregon Chief Justice Paul De Muniz
- 1:15p **Adjourn**

* Not seeking MCLE credit for these portions

PRINCIPLES OF SUCCESSFUL MULTI-JURISDICTIONAL LAW ENFORCEMENT IN AND OUT OF INDIAN COUNTRY

(SB 412)

ON THURSDAY, SEPTEMBER 18, 2014

SPONSORED BY DPSST AND THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS

FINAL PROGRAM OUTLINE

PROGRAM THEME:

Does improved collaboration between law enforcement agencies of different governments yield public safety benefits? If so, what practices tend to foster excellent multi-jurisdictional law enforcement? Lastly, have any issues *uniquely* attributable to Indian Country law enforcement arisen as a result of the enactment of SB 412 in 2011?

8:55 a.m. Invocation, welcome, and introductions

The Honorable Reyn Leno, Grand Ronde Tribal Chair.

Eriks Gabliks, Director, Department of Public Safety Standards & Training.

9:05 a.m. Expository Report – Facts, Figures, and Context on SB 412

Pete Shepherd, of counsel to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (Harrang Long Gary Rudnick, PC).

Shelby Rihala, Attorney, Jordan Ramis, PC.

Linsay Hale, Professional Standards Division Director, Department of Public Safety Standards & Training.

9:40 a.m. SB 412: The National Context.

Tom Gede, Member, Federal Indian Law And Order Commission, a principal with Bingham Consulting Group, and of counsel at Bingham McCutchen LLP.

10:00 a.m. Solicitation of written questions for presentation to subsequent panels.

Questions for subsequent presenters will be routed through facilitators.

10:05 a.m. Successes, speed bumps in implementing SB 412.

Facilitated by Shelby Rihala.

Brad Kneaper, former Chief of the Police Department of the Coos, Lower Umpqua, and Siuslaw Indians.

Mitch Hicks, Chief of Enforcement, Columbia River Inter-Tribal Fish Commission.

Tim Addleman, Chief of Police of the Umatilla Tribal Police Department.

Carman Smith, Chief of Police of the Burns Paiute Tribe.

11:15 a.m. Successes, speed bumps in implementing SB 412.

Facilitated by Pete Shepherd.

The Honorable Robert Wolfe, Polk County Sheriff.

The Honorable Terry Rowan, Umatilla County Sheriff.

Darrell Fuller, Oregon State Sheriff's Association Advisor.

12:15 p.m. LUNCH

Remarks during lunch from the Honorable Senator Floyd Prozanski.

1:30 p.m. Lessons learned from effective multi-jurisdictional, multi-sovereign law enforcement.

Multi-sovereign, multi-jurisdictional issues daily arise for law enforcement agencies whose mandates overlap with one another and with local law enforcement authorities. Such challenges existed long before SB 412 became law. Each of the panelists represents an entity with overlapping mandates. Each has been asked to discuss the most important of such issues. Each has been invited to offer at least one suggestion about how to wring the maximum amount of public safety from multi-sovereign, multi-jurisdictional law enforcement work.

Introduction and facilitation by the Honorable Sen. Ferrioli (approx. 5 minutes)

Panel:

Assistant United States Attorney Billy J. Williams.

Mitch Hicks, Chief of Enforcement, Columbia River Inter-Tribal Fish Commission.

Michael Slauson, Special Counsel to the Attorney General of Oregon for Public Safety, Oregon Department of Justice.

2:15 p.m. Effective relations between criminal investigative agencies and District Attorneys.

Like their non-tribal colleagues, tribal police officers exercising SB 412 authority by arrest or citation of an offender set in motion the State of Oregon's criminal justice machinery. District Attorneys influence that system in ways far exceeding the "simple" decision of whether to present a felony to a Grand Jury or otherwise to initiate a prosecution. District Attorneys may participate in the investigative phase of multi-sovereign, multi-jurisdictional task forces. Many participate in crime-prevention efforts such as domestic violence programs, and all of them perform services for the victims of crime. Some District Attorneys have adopted categorical charging or sentencing policies -- often imposed by budgetary considerations -- that supplement the black letter law for all the law enforcement agencies in a given county. District Attorneys faced these challenges long before SB 412 became law. Each of the panelists has been asked to discuss the most important of the prosecutors' concerns. Each has been invited to offer at least one suggestion from the prosecutor's perspective about how to wring the maximum amount of public safety from multi-sovereign, multi-jurisdictional law enforcement work.

Introduction and facilitation by the Honorable Rep. Barker (approx. 5 minutes)

The Honorable Paul Frasier, District Attorney of Coos County.

The Honorable Steven Leriche, District Attorney of Jefferson County.

3:00 p.m. Concluding Remarks

The Honorable Senator Arnie Roblan.

3:10 p.m. ADJOURN

Note About Conference Materials

Two full sets of pre-printed materials are available at each table. For additional full sets, including any material that presenters have used in their respective presentations that was not available prior to the conference, please contact Pete Shepherd's legal assistant, Chris Hardy, by e-mail at Chris.Hardy@harrang.com

S0060429.V6



Memorandum

Date: September 3, 2014

To: Conference Attendees: Principles of Successful Multi-Jurisdictional Law Enforcement In and Out of Indian Country (SB 412)

From: Linsay Hale, Professional Standards Division Director

Subject: DPSST's Role in the Implementation of Senate Bill 412

The passage of Senate Bill 412 (SB 412) by the 2011 Legislative Assembly assigned the Department of Public Safety Standards and Training (DPSST) specific responsibilities for ensuring the tribal police officers affiliated with interested tribal governments may act as authorized officers as defined in the bill. There are a number of provisions of the legislation that are outside of DPSST's jurisdiction which also bear on whether tribal officers are considered authorized officers under Oregon law. However, DPSST has had no role in implementing or verifying those provisions. This memorandum is limited to the areas which assigned DPSST specific responsibilities.

OVERVIEW: Tribal governments choosing to implement the provision of SB 412 are required to submit to DPSST a resolution regarding tribal insurance, a declaration that the tribal government has complied with the requirements of Sections 1 through 4 of the Act, and a copy of the public liability, property damage, and police professional liability insurance policies. All of these documents are kept on file at DPSST and are subjected to public inspection as required by law. DPSST requires all SB-412 compliant tribal law enforcement units submit annually an affidavit verifying compliance with these requirements, including a verification of the currency of the documents on file at DPSST.

Prior to certifying tribal public safety officers, DPSST ensures that tribal governments comply with all of the provisions of ORS 181.610 – 181.712. This includes, but is not limited to, reporting ALL personnel actions to DPSST within 10 days; reporting ALL convictions of tribal employees in certifiable positions on an ongoing basis, including convictions in tribal courts; and the submission of all required documents and scheduling of newly hired officers to attend their Basic Course within 90 days of hire.

NOTE: DPSST currently requires tribal law enforcement units employing authorized tribal police officers submit a notarized affidavit reporting any convictions occurring in tribal jurisdictions. With the reauthorization of the Violence Against Women Act in 2013, this requirement has been reexamined and determined to be redundant and is in the process of being repealed.

CURRENT STATUS: To date, the following Oregon tribes have elected to comply with the provisions of SB 412:

Coos, Lower Umpqua, Siuslaw Tribal PD (December 21, 2011)
Umatilla Tribal PD (January 6, 2012)
Warm Springs Tribal PD (April 8, 2012)
Grande Ronde Tribal PD (May 30, 2012)
Columbia River Inter-Tribal Fish Commission PD (September 21, 2012)
Coquille Indian Tribal PD (December 21, 2012)
Burns Paiute Tribal PD (November 25, 2013)

As of the above listed dates, all tribal law enforcement officers employed by these departments have been or will be trained and certified in the same manner as all other police officers in the state of Oregon.

To date, there are a total of 75 police officers employed by these tribal police departments. These 75 officers are subjected to the same certification maintenance requirements, to include maintaining minimum moral fitness standards as defined by Oregon Administrative Rule.

Since January 1, 2011, there has been one incident in which the certification of a tribal law enforcement officer employed by a SB 412 compliant department was permanently revoked through voluntarily relinquishment, the result of an off-duty criminal conviction. During the same time period, the certifications of 153 police officers employed by law enforcement units other than tribal have been revoked.

Introduction

On July 22, 2011, Governor Kitzhaber signed Senate Bill 412 into law, giving those tribal police departments which meet certain requirements the same ability to enforce state law outside of Indian Country as all other state and local law enforcement agencies. Since then, the Burns Paiute Tribal Police Department; Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) Police Department; Coquille Tribal Police Department; Confederated Tribes of Grand Ronde Police Department; Confederated Tribes of the Umatilla Indian Reservation Police Department; Confederated Tribes of Warm Springs Police Department; and the Columbia River Inter-Tribal Fisheries Enforcement (CRITFE) have all achieved SB 412 compliance.

This report is a compilation of information gathered from tribal police departments from five of the six SB 412 compliant tribes, as well as from CRITFE. The Burns Paiute Tribal Police Department achieved SB 412 compliance in November 2013; therefore, insufficient statistics were available as of the drafting of this report. The statistics contained in this report were provided by the respective departments based on the information available through the Spring of 2013. Tribes plan to update the data and republish this report in January, 2015.

All the tribal police chiefs and officers interviewed lauded the impact that SB 412 has had on their ability to work effectively and efficiently with other jurisdictions as well as the impact on overall public safety in general. For some departments, because of deputation agreements already in place with sheriffs which granted the tribal police department authority off tribal land, implementing SB 412 was a seamless transition. For others, deputation agreements were impractical or unavailable and SB 412 authority has filled in those gaps. This was especially important with CRITFE, for example, which routinely deals with nearly an equal number of Indians as non-Indians and whose enforcement area is not drawn by reservation boundaries.

SB 412 authority also has advantages over deputation agreements when tribal officers are conducting investigations in a county in which the tribe does not have such an agreement or when a tribal officer is traveling through such a county. However, in each of these examples cited by tribal police officers where SB 412 authority was exercised, it was done so in consultation with local law enforcement. Despite their ability to enforce state law off tribal land, tribal police departments have consistently focused their efforts on tribal properties. This report shows the significant majority of state law cases undertaken by tribal police departments, for both traffic and non-traffic offenses, took place on tribal land.

Additionally, tribal police officers provided valuable support to state and local law enforcement agencies. The SB 412 compliant tribal police departments, along with CRITFE, responded to a combined total of 1,302 mutual aid and assistance calls. These were instances in which tribal officers were either called upon to provide back-up to a non-tribal officer or to respond in the place of a non-tribal officer. Of those calls, 673 necessitated the tribal officer take further action. Additionally, tribal departments served a combined 226 state court warrants on tribal members. As state and local law enforcement agencies continue to face budget cuts, tribal police officers provide a valuable community resource.

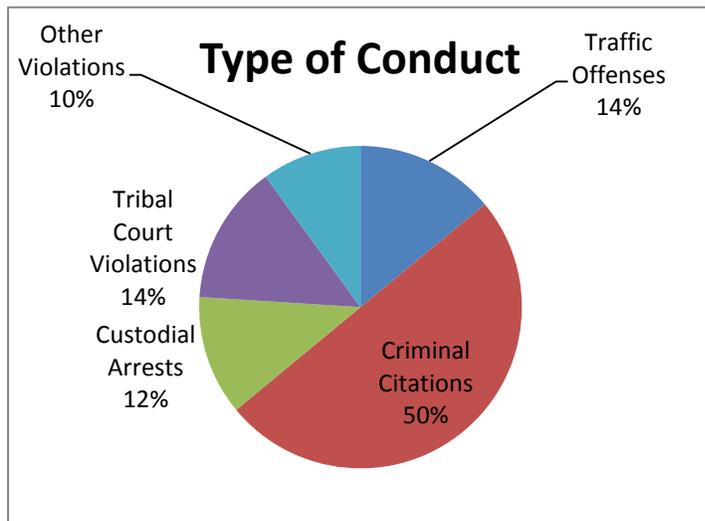
Tribes-by-tribe Data: Republished for SB 412 Implementation Conference, Sept. 18, 2014

Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI)

On December 21, 2011, the CTCLUSI Police Department became the first tribe in the state to become SB 412 compliant. The Department has 4 sworn officers, 3 of which are tribal members.

The Department’s response area consists of land in both Florence and Coos Bay, just under 1 square mile. This includes Three Rivers Casino and tribal housing in Florence, tribal housing and administration in Coos Bay, and undeveloped coastal property near Sunset Bay State Park.

Of the enforcement contacts to which case numbers were assigned, the majority handled by the CTCLUSI Police Department resulted in criminal citations, as shown in Figure 1. Most frequently, the Department cited for theft, possession of a controlled substance, and trespass.



Since December 2011, the Department has made 6 arrests, one of which was carrying out a state court arrest warrant. The CTCLUSI also issued 7 citations into tribal court, 6 of which were for possession of less than one ounce of marijuana, a violation under CTCLUSI Tribal Code. The category for “other violations” accounted for 10% of the cases. It includes violations such as careless driving or possession of less than one ounce of marijuana when not cited into tribal court.

Figure 1

The majority of the Department’s cases have occurred on tribal land. Of the Department’s 50 cases since SB 412 compliance, 43 have been on tribal land. Figure 2 shows the breakdown of the disposition of those cases, by year, and whether on tribal or non-tribal land.

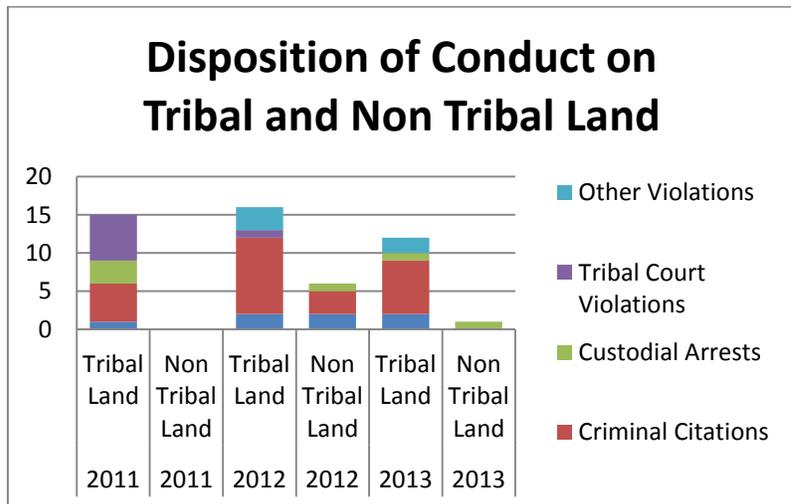


Figure 2

Between January 2012 and April 2013, the CTCLUSI Police Department handled 245 mutual aid and assistance calls for other agencies, though only one of those necessitated further action by a tribal officer. The Department was invited to join the Coos County major crimes team, but due to its size, cannot commit an officer at this time.

Two public records requests have been made of the Department for law enforcement records relating to the Department's exercise of authority under SB 412. The Department responded to those requests pursuant to Tribal Code and no appeal was made. No tort claims have been filed against the Department.

The CTCLUSI are currently planning to acquire additional land within the Tribes' aboriginal territory in Douglas, Lane, and Coos Counties. Should this acquisition occur, due to the distance between tribal properties, significant additional travel is anticipated by tribal police. This would add to the police presence on several main roadways, similar to the presence currently maintained on Highway 101 between Florence and Coos Bay.

Confederated Tribes of Grand Ronde

The Grand Ronde Police Department was created by a Tribal Council Resolution on May 5, 2010. It began with 1 officer and has since grown to 5, 3 of which are Tribal members. The Tribal Police Department became SB 412 compliant on May 30, 2012.

The Department’s response area is approximately 37 square miles of mostly checkerboard land. In addition to Spirit Mountain Casino, the Tribal Police Department is primarily focused on patrolling the Tribe’s main campus, including its two housing developments; Grand Meadows, a manufactured home park; and the Pow Wow grounds. The Department recently added a forest patrol officer as well.

Since becoming SB 412 compliant, the Grand Ronde Police Department has made 158 enforcement contacts pursuant to state law authority. Figure 3 shows the frequency of warnings, arrests, and citations.

The category for warnings includes both verbal and written and the citations category includes both traffic and non-traffic offenses. Tribal officers responded to 123 traffic incidents during this time. Of the enforcement contacts which resulted in a case being opened, the most frequent crimes investigated were theft, fraud, and drug activity. Incidents at the casino account for the substantial majority of cases investigated across each of these categories.

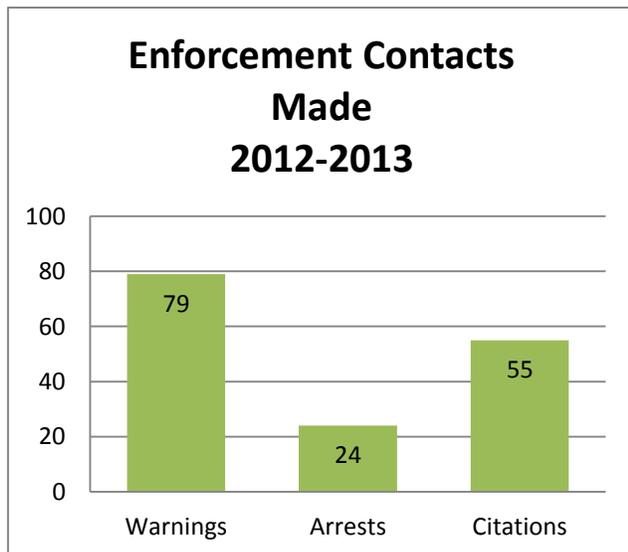
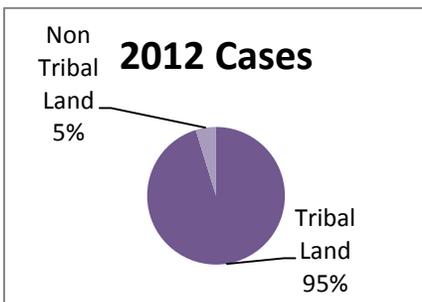
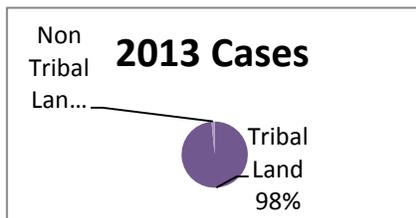


Figure 3



In 2012, the Tribal Police Department opened 63 cases. Through May 2013, there are 64 cases. Three of those cases in 2012 and only one this year have been for investigations off tribal land, as shown in Figure 4. The Grand Ronde Police Department has been called to assist outside agencies on 31 mutual aid and assistance calls, 3 of which resulted in further action by tribal officers.



As a result of SB 412 authority, the Department has an invitation to join the Polk County Inter-Agency Narcotics Team (POINT); however, due to its small size, the Department is unable to commit an officer at this time. No tort claims or public records requests have been made pursuant to SB 412.

Tribe-by-tribe Data: Republished for SB 412 Implementation Conference, Sept. 18, 2014

Confederated Tribes of the Umatilla Indian Reservation

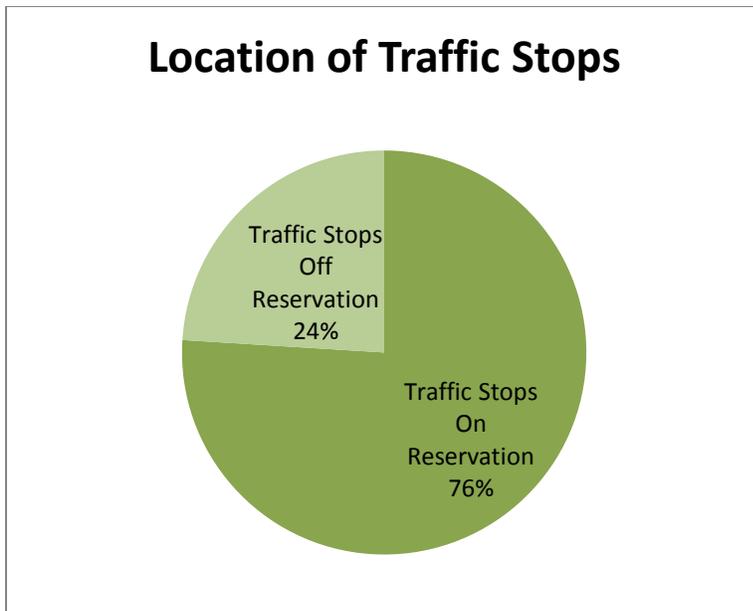
The Umatilla Tribal Police Department became SB 412 compliant on January 6, 2012 and has 18 sworn officers and 5 dispatchers. Of the sworn officers, 3 are tribal members; 3 dispatchers are tribal members in addition to 1 non-tribal Indian.

Providing law enforcement services to the Umatilla Indian Reservation, the Tribal Police Department has a service area of over 273 square miles. This includes Wild Horse casino, located in Pendleton. Though the property is mostly contiguous, some parts of the reservation are checker boarded. In addition, the Department responds to calls for service on fee land (land owned by non-Indians) within the reservation, and has enforcement authority over watershed property in Washington State.

Prior to the implementation of SB 412, the Umatilla Tribal Police Department had a deputation agreement in place with the Umatilla County Sheriff. This agreement goes back to at least 1995. The Tribe also owns small tracts of land in Union County outside the reservation. Even though the Department did not have a deputation agreement in place with Union County, the Tribe maintained a strong relationship with the county sheriff and was granted enforcement authority on those properties, most frequently in response to fish and wildlife violations.

The Umatilla Tribal Police Department is one of the busiest tribal police departments in the state, with a significant majority of its enforcement actions occurring on the reservation. Because of the volume of cases handled by the Umatilla Tribal Police Department, this report will highlight only 2 types of enforcement actions—traffic stops made as well as arrests.

Figure 4



The Tribal Police Department made 533 traffic stops, 405 of them, or 76%, were on the Umatilla Reservation, as shown in Figure 5. Those 533 traffic stops resulted in 900 verbal warnings and 263 traffic citations. The difference between total stops and warnings given is because an officer may make several warnings at the same stop, in addition to or instead of issuing a citation.

When looking at the incidents of arrests made by tribal police officers, the numbers are weighted even more heavily towards occurring on the reservation, as shown in Figure 6. Of the 434 arrests made by the Department, only 30, or 7%, of them occurred outside the boundaries of the reservation.

The Umatilla Tribal Police Department works closely with neighboring law enforcement agencies. The Umatilla Tribal Police Department works closely with neighboring law enforcement agencies. It has one investigator assigned to the Blue Mountain Enforcement Narcotics Team (BENT) and is also a member of the county's major crimes team.

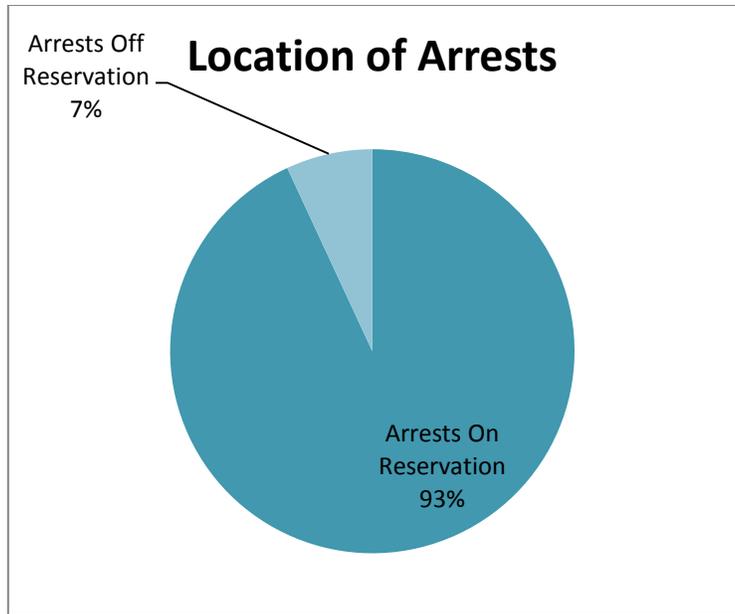


Figure 5

Additionally, the non-tribal agency members of BENT have been deputized by the Umatilla Tribal Police Department to work on the reservation, resulting in a seamless response to incidents both on and off the reservation. The same is true for the Pendleton SWAT team.

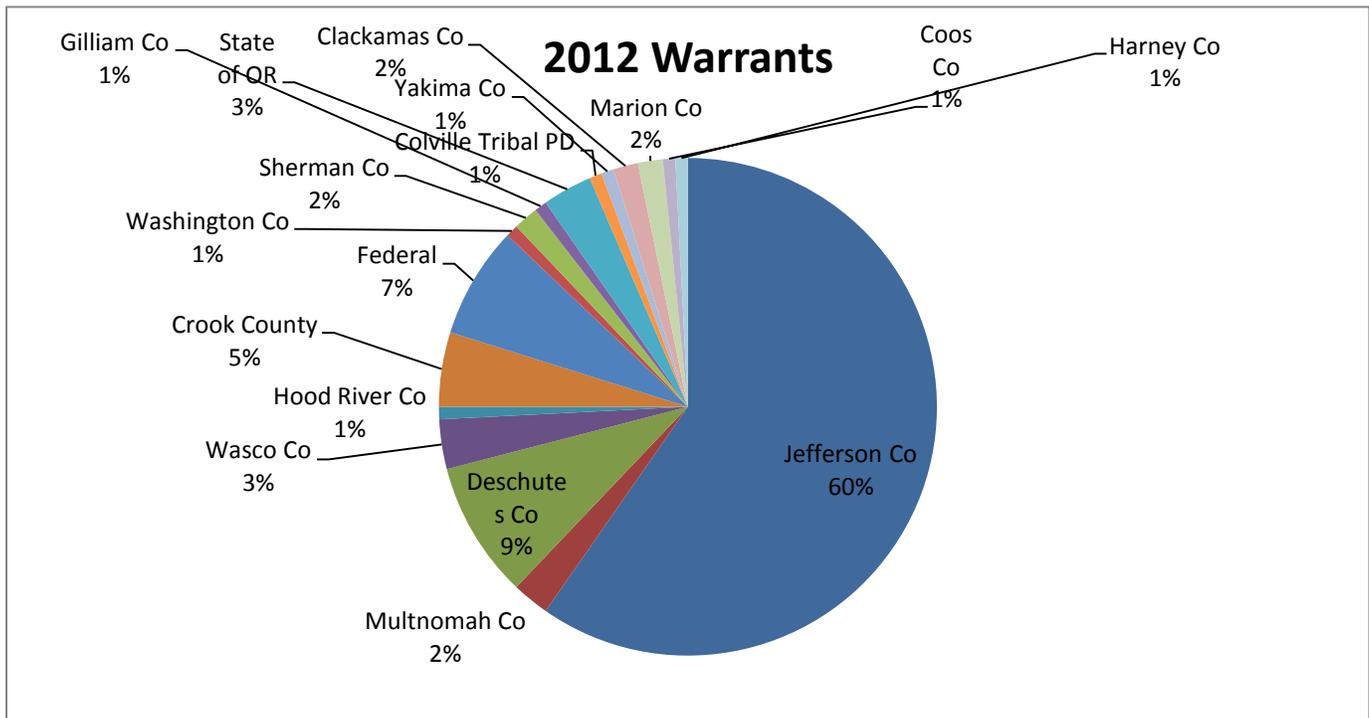
Tribal police officers have responded to 335 mutual aid and assistance calls for outside agencies, opening cases in 38 of them. Umatilla Tribal Police Department Officers have also served 43 state court warrants. No tort claims or public records requests have been made on the Department as a result of SB 412 authority.

Confederated Tribes of Warm Springs Reservation

The Warm Springs Tribal Police Department is the largest tribal police department in the state with 27 sworn police officers, 2 of which are tribal members. The police department is just one piece of the tribal Public Safety Department which also includes a tribal jail, fire department, tribal court, and parole and probation. There are an additional 17 sworn corrections officers who also have arrest authority; 1 is a tribal member.

With a service area of 1,006 square miles of reservation land, the Warm Springs Tribal Police Department covers the largest geographic area in the state. Reservation land spans over four counties—Wasco, Jefferson, Marion, and Clackamas. In fact, the Warm Springs Reservation is the largest land mass reservation in the Pacific Northwest and is home to approximately 5,000 tribal members. This land is a mixture of high desert, mountain, and forest areas, some of which are very remote and only accessible by a 4-wheel drive vehicle. The reservation also includes Kah-Nee-Tah Resort and Indian Head Casino, both in Warm Springs.

On April 9, 2012, the Warm Springs Tribal Police Department became SB 412 compliant. Since then, the majority of the Department’s enforcement actions taken pursuant to SB 412 have been serving warrants on the reservation. In 2012, the Department had 8 state law cases, including runaways who were returned to their local jurisdiction, as well as assistance with traffic accidents or a murder investigation. By contrast, that same year since becoming SB 412 compliant, the Department served 86 warrants. The jurisdiction issuing the warrant is indicated in Figures 7 and 8.



Similarly, between January and early June 2013, the Warm Springs Tribal Police Department has taken action in 10 state law cases and served 76 warrants. The state law cases to date this year have included assault, possession of a controlled substance, and motor vehicle accidents.

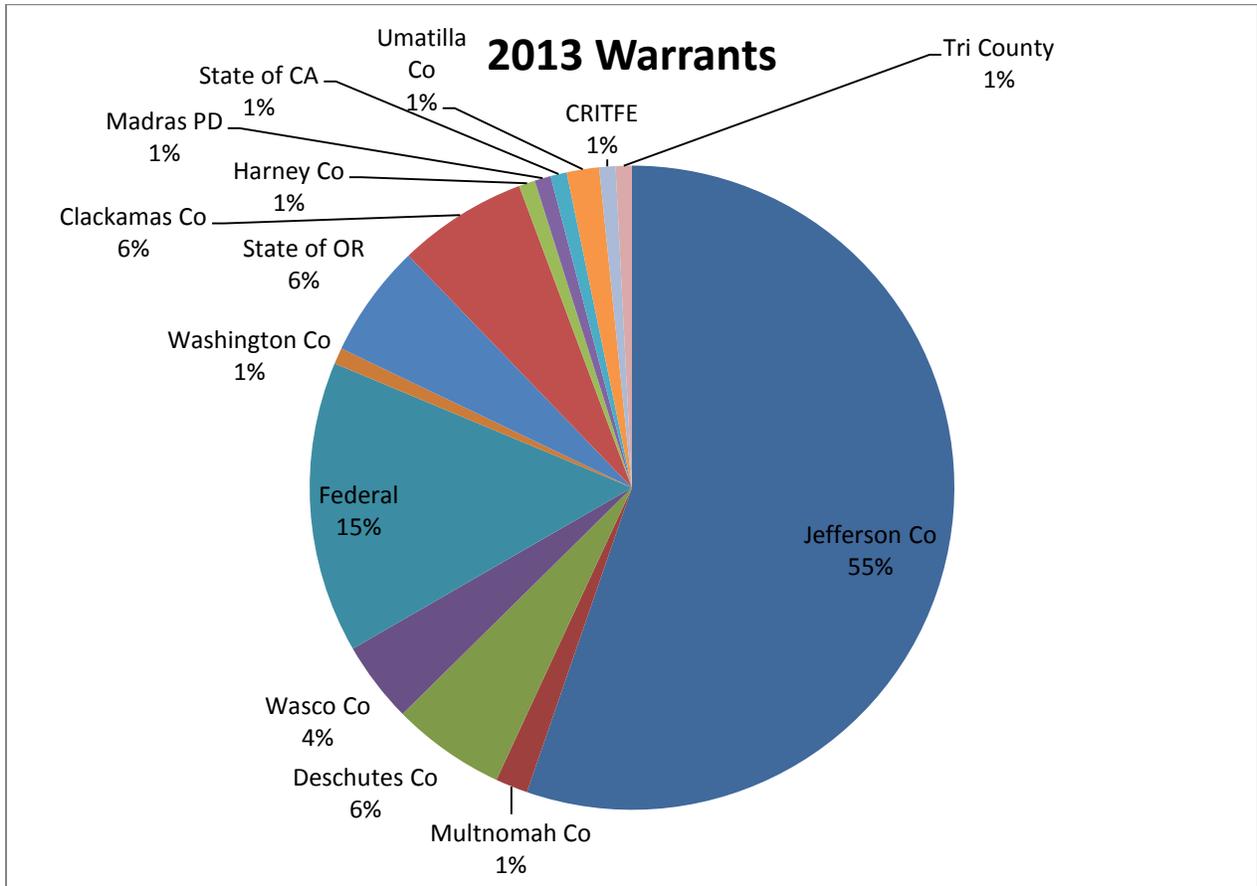


Figure 8

In both years, the warrants were most frequently issued for failure to appear and parole and probation violations.

Since the passage of SB 412, relationships have improved between tribal and non-tribal law enforcement. Efforts are being made to increase the visibility of Oregon State Police and County Sheriff's Officers on the reservation and sheriffs and district attorneys are conducting trainings on the reservation and including the Tribal Police Department. The Department had deputation agreements with Wasco and Jefferson Counties prior to SB 412.

Two officers from the Warm Springs Police Department are assigned to the CODE team, the Central Oregon Drug Enforcement Team. All of the Department's six detectives, including two drug detectives, are part of the FBI Safe Trails Task Force. No tort claims or public requests have been made of the Tribal Police Department pursuant to SB 412.

Coquille Indian Tribe

The Coquille Tribal Police Department became SB 412 compliant on January 1, 2013. The Department is made up of 4 sworn officers and 2 reserve officers. Two of the sworn officers and both reservists are tribal members. The Department's patrol area is approximately 11 square miles, a large portion of which is the Coquille Forest.

Since becoming SB 412 complaint, though October 2013, the Coquille Tribal Police Department has logged 145 cases. Eighty of these cases have been assists to other agencies. These assists include a wide variety of incidents, ranging from accidents to thefts, driving complaints to burglaries. Most often, requests for assistance have been made by the Coos County Sheriffs' Office, Oregon State Police, Coos Bay Police Department, and North Bend Police Department. Also included are requests for the Department's K9 unit.

Figure 9

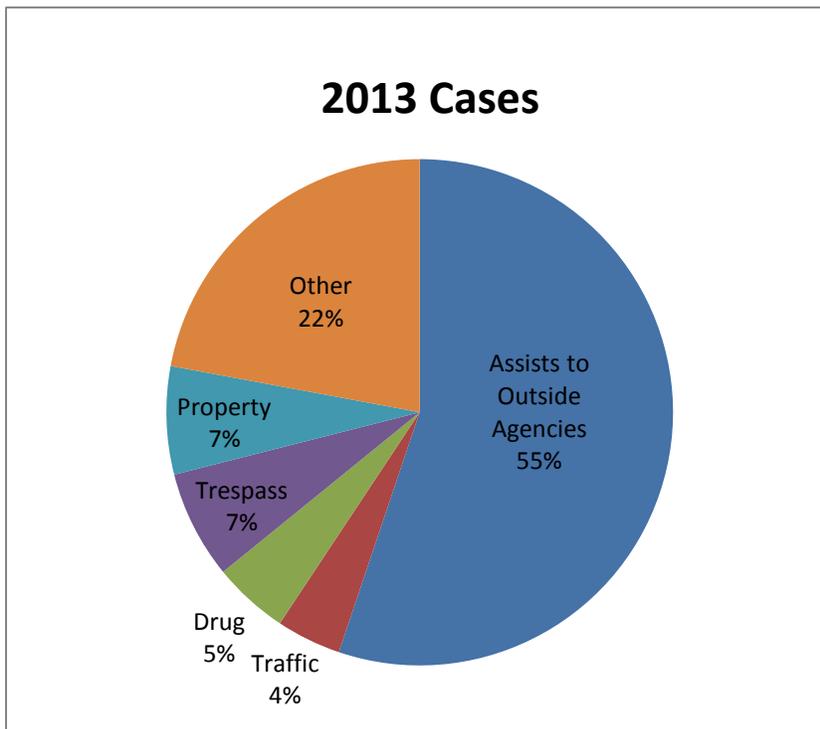


Figure 9 shows the breakdown of the Department's 145 cases in 2013. Trespass actions accounted for 10 cases, as did property crimes such as theft, burglary, confiscated property, or found property. Traffic crimes, such as accidents or driving while suspended, made up 6 cases; 7 cases were for drug offenses. The remaining 32 cases in the "other" category include criminal mischief, domestic disputes, harassment, or reports of suspicious activity. Note that the chart captures each case only once; for example, a traffic accident to

which the Coquille Police Department responded to assist the Coos County Sheriff's Office appears as an outside assist, not as a traffic case.

Prior to SB 412, the officers of the Coquille Tribal Police Department were deputized by the Coos County Sheriff. The Department is a member of the Major Crimes Team and the South Coast Inter-Agency Narcotics Team. There have been no public records requests or tort claims made pursuant to SB 412.

Columbia River Inter-Tribal Fisheries Enforcement (CRITFE)

CRITFE is the enforcement arm of the Columbia River Inter-Tribal Fish Commission. The Commission coordinates management policy and provides fisheries technical services for the Yakama, Nez Perce, Warm Springs, and Umatilla tribes. CRITFE has 13 sworn officers; 8 are tribal members and 2 are members of the tribes which make up the Commission. After both of its Oregon member tribes became SB 412 compliant, CRITFE too completed the process and gained compliance on September 21, 2012.

CRITFE's enforcement area spans across 2 states, 10 counties, and over 150 miles of river. Based in Hood River, CRITFE is charged with enforcing all fishing regulations and protecting tribal fishing rights along the Columbia River. Officers also protect archeological sites and police the 31 tribal fishing access sites in its service area of the Columbia, stretching from Bonneville Dam to McNary Dam.

Because the geography of CRITFE's enforcement area is not defined by reservation boundaries, state law enforcement authority is essential to being able to carry out its responsibilities. Prior to SB 412, CRITFE relied on deputation agreements with county sheriffs. However, with tribal areas and responsibilities in 7 Oregon counties, securing such agreements and maintaining them in shifting political climates proved challenging.

Figure 10

Between September 2012 and May 2013, CRITFE officers made 34 enforcement contacts; 19 on tribal land and 15 contacts on non-tribal land. Figure 10 shows the frequency of the type of conduct to which the department responded. Of CRITFE's cases, 50% of them were for trespass, most frequently for non-tribal members fishing at tribal fishing access sites. State violations, most often for conduct such as fishing out of season, without a license, or fishing in a closed area, made up 26% of the enforcement contacts while traffic incidents accounted for 21%. CRITFE officers made one custodial arrest during this time, a warrant arrest for a parole violation, discovered in the course of a fishing enforcement contact.

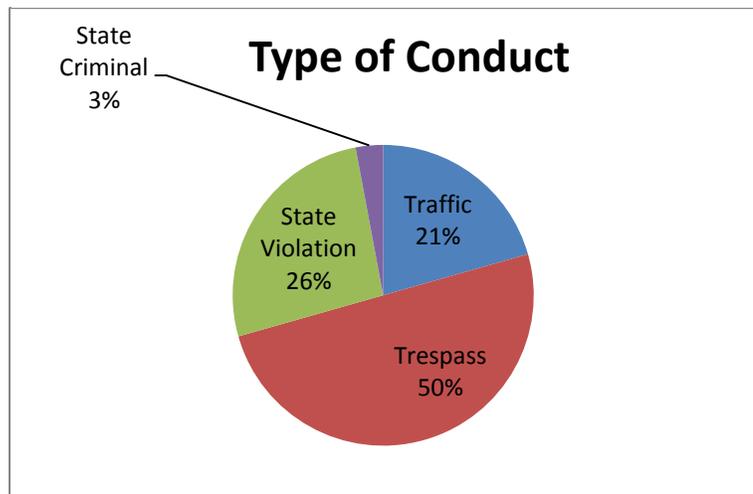


Figure 11 breaks down CRITFE's 34 enforcement contacts by year and also shows the frequency of the type of conduct on both tribal and non-tribal land. Again, this chart illustrates that the majority of

enforcement actions on tribal land are for trespass, whereas traffic enforcement and violations of state law make up the majority of CRITFE’s cases on non-tribal land.

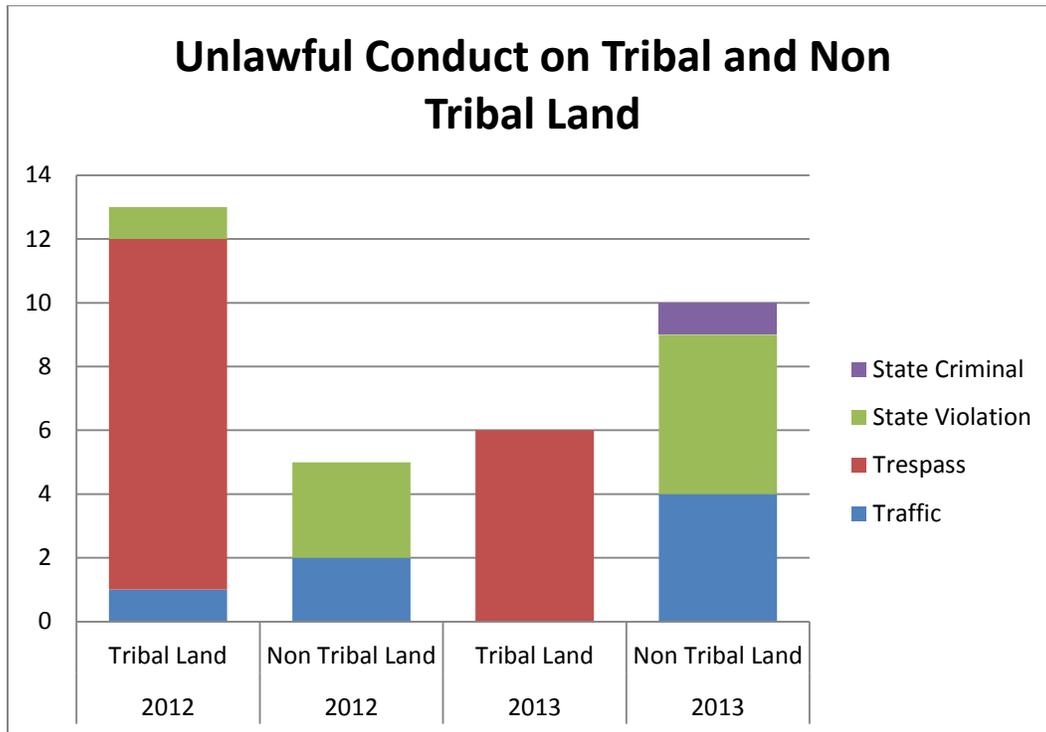


Figure 11

In addition to carrying out a state court arrest warrant, CRITFE officers have also responded to 82 mutual aid or assistance calls for neighboring agencies. The department took action in 7 of these calls. Additionally, officers were called upon to testify in 2 state court cases. No tort claims have been filed against CRITFE for acting in its capacity under SB 412, nor have any public records requests been made.

Conclusion

The following chart shows the collaborative impacts SB 412 has had on public safety. Prior to the passage of this law, tribal police officers were reliant upon deputation agreements in order to act outside of Indian Country. Now, tribal officers with equal training and qualifications as non-tribal officers have the same authority as their state and local colleagues. As a result, tribal officers are able to provide assistance to other agencies without a deputation agreement, aid with serving state court warrants on tribal members on tribal land, and facilitate cooperation by participating on inter-agency teams or task forces.

Tribe	Mutual Aid - No Action	Mutual Aid - Action Taken	Total Mutual Aid Responses	Membership on Inter-Agency Teams	Tribal Officer Carries out State Ct Warrant
Coquille	269	80	349	2	3
CRITFE	75	7	82	0	2
CTCLUSI	244	1	245	*	1
Grand Ronde	31	3	34	*	15
Umatilla	10	335	345	2	43
Warm Springs	◇	247	247	2	162

Total	629	673	1302	6	226
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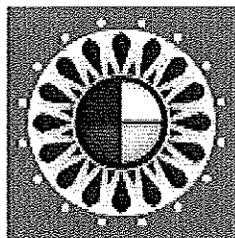
* Invitation extended to tribal police department, but insufficient resources to commit officers at this time

◇ No information available

Based on the statistics compiled for this report, the use of SB 412 authority by tribal police officers has been largely limited to law enforcement on tribal lands, but has also been an important piece of a collaborative public safety system with non-tribal jurisdictions as well. Whether in the form of a mutual aid or assistance call, serving a state court arrest warrant on a tribal member, or participation on an inter-agency team made possible by SB 412, the authority conferred on tribal police departments by the law has benefited the entire law enforcement system.

A ROADMAP FOR MAKING NATIVE AMERICA SAFER

Report to the President &
Congress of the United States



Indian Law & Order Commission

November 2013

PREFACE

The Indian Law and Order Commission is pleased to transmit its final report and recommendations—A ROADMAP FOR MAKING NATIVE AMERICA SAFER—as required by the Tribal Law and Order Act of 2010, Public Law 111-211 (TLOA). These recommendations are intended to make Native American and Alaska Native nations safer and more just for all U.S. citizens and to reduce the unacceptably high rates of violent crime that have plagued Indian country for decades. This report reflects one of the most comprehensive assessments ever undertaken of criminal justice systems servicing Native American and Alaska Native communities.

The Indian Law and Order Commission is an independent national advisory commission created in July 2010 when the Tribal Law and Order Act was passed and extended earlier in 2013 by the Violence Against Women Act Reauthorization (VAWA Amendments). The President and the majority and minority leadership of the Congress appointed the nine Commissioners, all of whom have served as volunteers. Importantly, the findings and recommendations contained in this Roadmap represent the unanimous conclusions of all nine Commissioners—Democratic and Republican appointees alike—of what needs to be done now to make Native America safer.¹

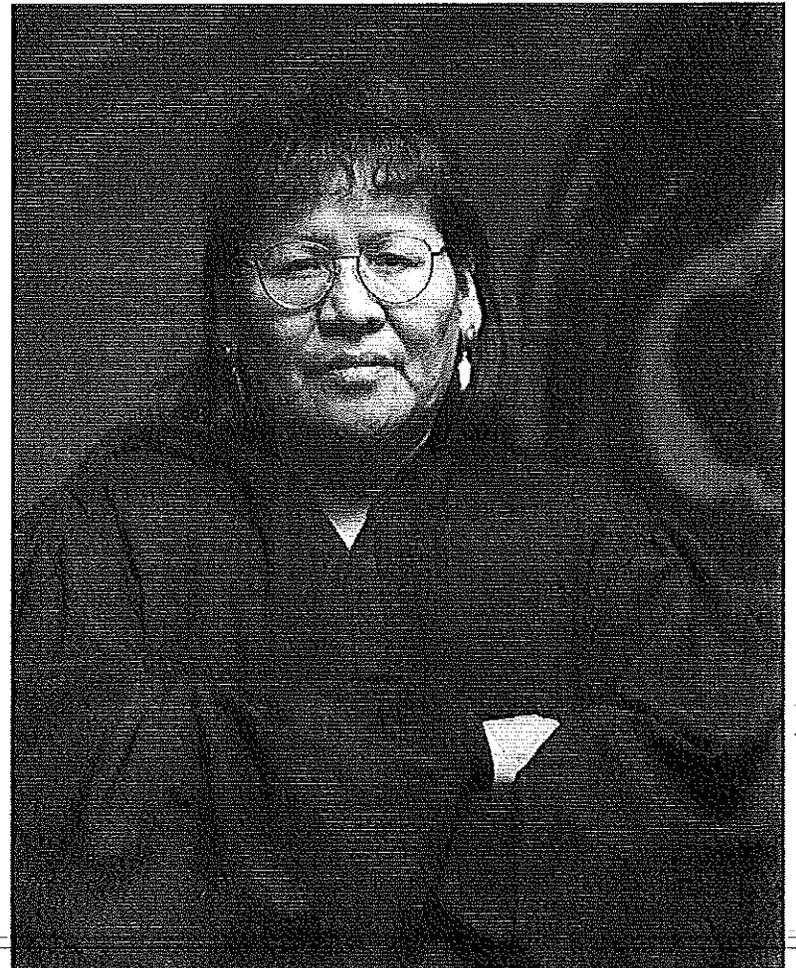
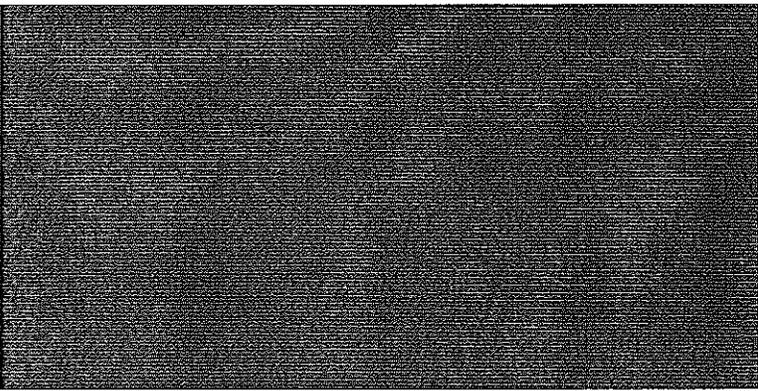
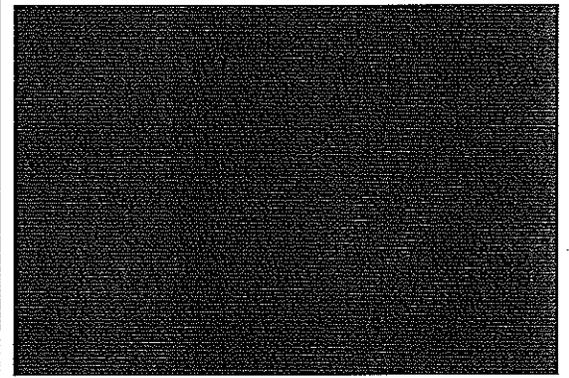
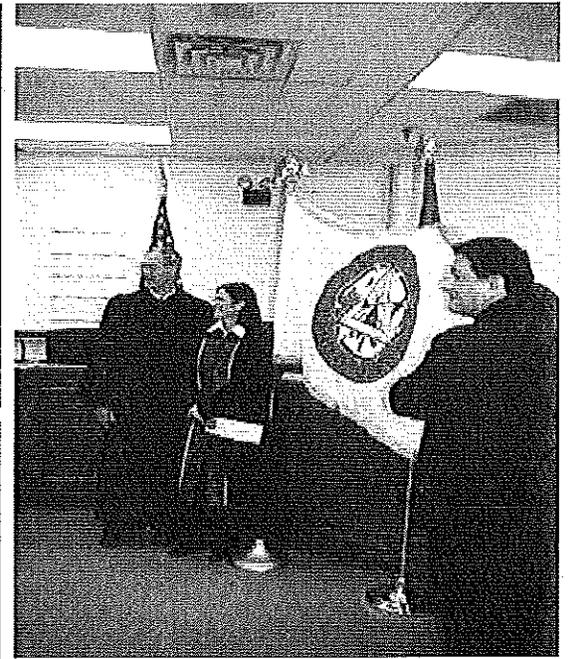
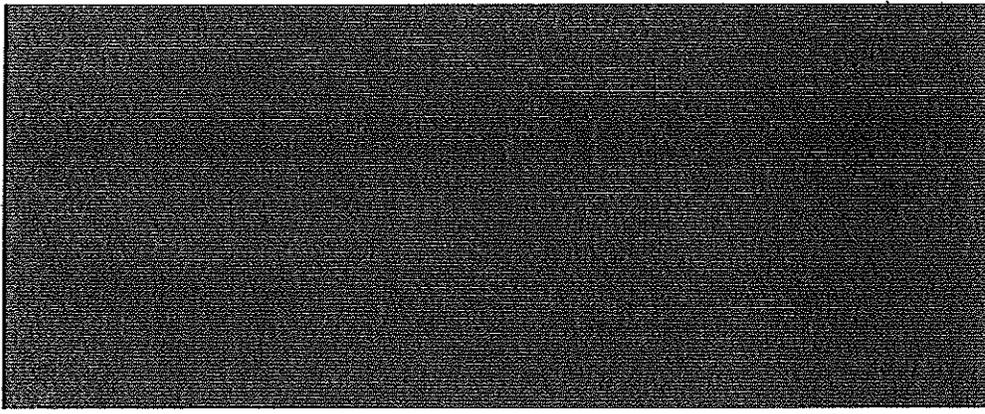
As provided by TLOA, the Commission received limited funding from the U.S. Departments of Justice and the Interior to carry out its statutory responsibilities. To save taxpayers' money, the Commission has operated entirely in the field—often on the road in federally recognized Indian country—and conducted its business primarily by phone and Internet email. The Commission had no offices. Its superb professional staff consists entirely of career Federal public officials who have been loaned to the Commission as provided by TLOA, and we are grateful to them and the Departments of Justice and the Interior.

TLOA has three basic purposes. First, the Act was intended to make Federal departments and agencies more accountable for serving Native people and lands. Second, TLOA was designed to provide greater freedom for Indian Tribes and nations to design and run their own justice systems. This includes Tribal court systems generally, along with those communities that are subject to full or partial State criminal jurisdiction under P.L. 83-280. Third, the Act sought to enhance cooperation among Tribal, Federal, and State officials in key areas such as law enforcement training, interoperability, and access to criminal justice information.

In addition to assessing the Act's effectiveness, this Roadmap recommends long-term improvements to the structure of the justice system in Indian country. This includes changes to the basic division of responsibility among Federal, Tribal, and State officials and institutions. The theme here is to provide for greater local control and accountability while respecting the Federal constitutional rights of all U.S. citizens.

Tribal governments, like all governments, have a moral duty to their citizens and guests to ensure the public's safety. They are also the most appropriate and capable government to ensure such safety—they employ the local police, they are the first responders, and understand the needs of their community better than all others. Unfortunately, the American legal system—through legislation and case law—has significantly hamstrung their ability to ensure safety in Indian country.

*Brent Leonhard, Interim Lead Attorney, Confederated Tribes of the Umatilla Indian Reservation
Written testimony for the Indian Law and Order Commission, Hearing on the Tulalip Reservation, WA
September 7, 2011*



INTERGOVERNMENTAL COOPERATION: ESTABLISHING WORKING RELATIONSHIPS THAT TRANSCEND JURISDICTIONAL LINES

Stronger coordination among Federal, State, and Tribal law enforcement can make Native nations safer and close the public safety gap with similarly situated communities. Enhanced coordination is also a proven way to combat off-reservation crime. The Federal government cannot and should not force Tribal and State leaders to work together. Local priorities and concerns ought to drive cooperation, and it needs to be voluntary. But the President and Congress can promote and support more positive forms of collaboration. This chapter focuses on how many Native officials are working with their State and Federal counterparts to share information, training, and services. Additionally, the chapter suggests steps that can be taken now to build on and accelerate that progress.

The Indian Law and Order Commission finds that whether in the form of law enforcement agreements between Tribes and State or local law enforcement agencies or by legislation giving Tribal police the full range of State police officer powers, cooperation among agencies at the local level works most effectively to ensure comparable responses to crimes in Indian country. When crimes involve non-Indians in Indian country, and as discussed elsewhere in this report, Tribal police have only been able to exercise authority to detain a suspect, not to make a full arrest. This lack of authority jeopardizes the potential for prosecution, the security of evidence and witnesses, and the Tribal community's confidence in effective law enforcement.

However, great promise has been shown in those States where intergovernmental recognition of arrest authority occurs. It is also true wherever intergovernmental cooperation has become the rule, not the exception, that arrests get made, interdiction of crime occurs, and confidence in public safety improves. Of equal importance, the cooperation of Federal agencies with Tribal public safety agencies is critical to success in Indian country. Such cooperation includes the prompt and efficient issuance of deputization agreements and Special Law Enforcement Commissions (SLECs).¹ Also important are the timely sharing of criminal justice information and the notification to Tribes of arrests, dispositions, and reentry of American Indian Federal prisoners.

These goals and principles are mandated by the Tribal Law and Order Act (TLOA). Through the Act's findings, Congress and the President acknowledged that Tribal police officers usually are the first responders to address crimes on Indian reservations.² More generally, TLOA aspires to create greater cooperation among Tribal, Federal, and State law enforcement departments and agencies. While acknowledging the limits of what Federal law can and should impose on State and Tribal governments, nonetheless the Act authorizes some Federal support and encouragement for intergovernmental agreements ranging from mutual aid agreements, to cross-jurisdictional training, to the deputization of Tribal and State officials and Federal peace officers for the enforcement of Federal criminal laws within Indian country.

For example, the U.S. Attorney General is empowered to "provide technical and other assistance to State, Tribal, and local governments that enter into cooperative agreements, including agreements relating to mutual aid, hot pursuit of suspects, and cross-deputization for the purposes of: (1) improving law enforcement effectiveness; (2) reducing crime in Indian country and nearby communities; and (3) developing successful cooperative relationships that effectively combat crime in Indian country and nearby communities."³

The Commission heard extensive testimony from representatives of Tribes that operate under legal arrangements that recognize Tribal police authority on par with the State and local police and from those that employ Federal Bureau of Indian Affairs SLECs, (also discussed in Chapter 1). The Commission was encouraged by these reports, but believes more progress is needed, particularly with the approval of SLECs and with the recognition of Tribal police authority in P.L. 83-280 States. To facilitate this cooperation, more is needed to ensure tort liability coverage for Tribal police officers, with an expansion of the Federal Tort Claims Act (FTCA) as necessary. Public pension eligibility and portability are of particular importance to the hiring and retention of Tribal law enforcement personnel.

The Commission believes that ultimately more progress in public safety will come from voluntary efforts to improve cooperation and coordination among the sovereigns—Federal, State, and Tribal—and from

local efforts, such as State legislation and local agreements, than from the imposition of Federal preemptive authority and policies. As noted, the Federal government can and should provide incentives and assistance to facilitate local improvements.

Additionally, the Federal government has an independent obligation to improve its own coordination with Tribal law enforcement agencies. This includes reporting systems that “track” the offender and criminal information sharing.

FINDINGS AND CONCLUSIONS: LAW ENFORCEMENT AGREEMENTS

A principal goal in intergovernmental cooperation is to find the right mechanisms to facilitate the entry into Tribal-State and Tribal-Federal law enforcement agreements and Memoranda of Agreement (MOAs) or Memoranda of Understanding (MOUs), including SLECs and local deputation and cross-deputation agreements. The Commission learned there are unconscionable administrative delays and impediments in the processing and approval of SLECs. With respect to Tribal-State-local MOUs, there are questions of (1) local reluctance to expose State-local to third-party liability without adequate insurance coverage, and (2) ensuring that Tribal police agencies and officers obtain respective State Peace Officer Standards and Training (POST)⁴ or equivalent certification as a prerequisite to recognition as peace officers under any agreement or legislative program.

As to tort liability, Congress should either extend the FTCA (discussed below) to qualified Tribal police forces or create a federally sponsored insurance pool for Tribal police forces to enter into as a means to facilitate the MOUs. To ensure that POST certification is an option, funding is needed to underwrite Tribal police officers obtaining POST certification unless the officers already have POST certificates. Most States require not only the officers, but also the police department to be POST certified, which triggers additional expenses and administrative work.

Full Tribal jurisdictional option. Of course, if a Tribal government opts for the Tribal jurisdiction plan as proposed in this report (Chapter 1), its Tribal justice agency will have clear arrest and prosecutorial authority over all suspects/defendants on the reservation. However, even under the proposed Tribal jurisdiction plan, Tribes will need to cooperate with Federal, State, local, and other Tribal authorities to share resources and training, enter into cooperative agreements, and develop mutually supporting justice programs to improve and sustain acceptable levels of public safety. Not all Tribal governments will want to pursue broader jurisdiction. Many Tribes are small in geography or population and lack resources to exercise justice authority. They likely will stay within Federal or P.L. 83-280 arrangements under which they currently do not have effective arrest authority, at least

People living on the reservation deserve all the resources available to them in a moment of crisis. To the woman facing assault, to the child who is being abused who is crying out for help, it doesn't matter what uniform the police officer is wearing or what decal is on the door of that police car. In that moment of fear, in that moment of crisis, people just want to be safe and secure.

*Leroy "J.R." LaPlante, Secretary of Tribal Relations, State of South Dakota
Testimony before the Indian Law and Order Commission, Hearing on the Rosebud Indian Reservation, SD
May 16, 2013*

without authorizing legislation, deputization agreements, or SLECs. Thus, the importance of intergovernmental cooperation is paramount—necessary for strengthening arrest powers and responding effectively to incidents, particularly those involving violence, and the victims involved.

SLECs. With a Special Law Enforcement Commission, a Tribal police officer, employed by a Tribal justice agency, can exercise essentially the same arrest powers as a Bureau of Indian Affairs (BIA) officer assigned to Indian country, without compensation by the Federal government.⁵ BIA policy states that SLECs are to be issued or renewed at the BIA's Office of Justice Services (OJS) discretion and only when a legitimate law enforcement need requires issuance.⁶ SLECs enable BIA to obtain active assistance in the enforcement of applicable Federal criminal statutes. The issuance of a SLEC requires an agreement with a Tribal government law enforcement agency, called a "deputization agreement." As the SLEC is to aid in the enforcement or carrying out applicable Federal laws in Indian country, it should enable a Tribal police officer to make an arrest for a violation of the General Crimes Act, 18 U.S.C. § 1152, or the Major Crimes Act, 18 U.S.C. § 1153, at least in the non-P.L. 83-280 States and Tribal jurisdictions.

While the SLEC appears to be precisely the kind of inter-governmental cooperation that would greatly enhance public safety in Indian country, the Commission heard testimony that BIA certification of the SLEC commissions is often delayed far too long. While SLEC training may involve 3 days of training (and renewal every 3 years), the BIA-run process for certification often takes 1 year or more. Some delays are attributable to the need for background investigations, which often are delayed for bureaucratic reasons. The Commission learned that over time, many non-Tribal jurisdictions fall away completely from the SLEC program, and even Tribal governments are sometimes forced to abandon or limit the number of participating officers. The limited geographic locations in which SLEC training typically is offered also limits the program's success and availability.

The Commission believes that management of SLECs should move from the BIA to the U.S. Department of Justice (DOJ) to speed up training and certification. DOJ should take inventory and report back to Congress every year. If deputization agreements and SLEC applications are not acted upon in 30 days, they should be deemed approved absent an affirmative showing to the contrary.

State and local agreements. The Commission believes the recognition of Tribal government and jurisdictional powers through agreements with State and local jurisdictions will develop partnerships, allow the sharing of knowledge and resources, and result in better chances to coordinate police enforcement, thereby strengthening public safety for Tribal reservations and nearby communities.⁷ Greater intergovernmental cooperation often results in better services for Indian country: more cost effective, culturally compatible, and with better arrest and prosecution rates.⁸

Nowhere has this been more promising than in the entering into of MOUs or other similar agreements between local law enforcement agencies and Tribal public safety agencies to permit or deputize the Tribal officers to enforce State criminal law. States have either authorized or countenanced different forms of such agreements, but in most cases MOUs have served to ease the burden of the non-Indian police forces that often cannot respond timely to the calls for assistance. Additionally these agreements have allowed a full arrest of a suspect, securing a crime scene, protecting evidence and witnesses, and ensuring appropriate arraignment and prosecution.

States such as Michigan have encouraged deputization agreements. Of the 10 Tribes that maintain Tribal law enforcement departments, 9 have agreements with a local jurisdiction or local police.⁹ These agreements take the form of deputization of Tribal officers by the county sheriff. While there is no statewide agreement for deputizing Tribal police, the local jurisdictions have entered into the agreements. Additionally, they allow for cross-deputization of Tribal and county officers to enforce each other's laws under certain limitations.¹⁰ MOUs in most other jurisdictions allow deputization of the Tribal police without deputizing the county officers to act as Tribal agents.

Arizona presents one positive example where Tribal police are encouraged to take State POST certification training and then enforce State law as Tribal police. Arizona's unique environment encourages and supports cross-deputization agreements. An Arizona statute allows Tribal police officers who meet Arizona State qualification and training standards to exercise all law enforcement powers of peace officers. When the designation expands jurisdiction, an MOA of mutual aid is necessary. Currently, 6 of the 22 Tribes in Arizona participate in this arrangement, and the number is expected to grow. A side benefit of the arrangement is that relationships between Native and non-Native officers form and grow because they attend the same academy and POST-education events.

Additionally, certified Tribal police in Arizona may qualify for the State's public safety retirement plan, provided that their Tribal employers have joined that plan. Because certified Tribal police are regularly attracted to better pay and benefits found in local and State police departments, the importance of Tribal officers being included in the State's retirement plan cannot be overstated. Intergovernmental agreements are working well for improving Tribal law enforcement and arrest powers on reservations in Arizona. When a sheriff's deputy is trained with the Tribal officer, everyone benefits and professionalism is enhanced.

Oregon is another State where, by legislation, peace officer powers are granted to qualifying Tribal police officers. Oregon Senate Bill 412 was signed into law in July 2011, and has worked well to allow arrests by Tribal police of both non-P.L. 83-280 Tribes (e.g., Warm Springs and Umatilla), and P.L. 83-280 Tribes that develop a Tribal police force.

Multiple safeguards were enacted to allay fears that Tribes would abuse the powers granted. Among them are the requirements that to qualify an officer, the Tribe must be bound by an approved deadly physical force plan, retain and allow inspection of relevant records, preserve biological evidence in the same manner as other police agencies, and waive sovereign immunity as to tort claims asserted in the Tribal government's court that arise from the conduct of an authorized Tribal police officer. These requirements arguably impose restrictions on the sovereign prerogatives of the Tribe participating, but the public safety benefits are indisputable. And keeping communities safe lies at the very heart of any sovereign's duty to its citizens.

Significantly, Oregon Senate Bill 412 addressed the issue of liability insurance. It requires a participating Tribal police agency to demonstrate it is self-insured for both public liability and property damage for vehicles operated by authorized Tribal police officers and that it carries police professional liability insurance. The policy must be sufficient to satisfy settlements and judgments arising from the tortious conduct of authorized Tribal police officers in an amount equal to or greater than comparable amounts applicable to a local public body.

California is an example of a State where Tribal-local law enforcement agreements have not flourished. In 1999, a State bill very similar to Oregon's Senate Bill 412 almost passed; it would have recognized Tribal police officers from certified Tribal police departments as "peace officers" under the State penal code, with full powers of arrest over any individual suspect. At the last minute, the bill failed because of reported concerns by legislators and local officials that Tribes exercising sovereign immunity would be shielded and instead parties would be directed toward the deeper pockets of the county government's coffers.

To facilitate MOUs, the liability question must be addressed. Oregon has provided a statutory scheme that requires the Tribe to self-insure, but not every Tribe can afford or is willing to do so, nor will States uniformly adopt the same policy approach as Oregon.

In non-P.L. 83-280 States, the use of SLECs calls for expanding the FTCA to be made unequivocally applicable to qualifying Tribal police departments. In instances of deputization agreements in both P.L. 83-280 and non-P.L. 83-280 States, an affordable insurance pool mechanism should be made available. Otherwise this impediment to reaching MOUs or legislative parity will remain elusive in many jurisdictions.

Finally, to facilitate MOUs for deputization arrangements, Tribes need the financial resources to participate in the requisite POST training in the State where they are located. The Federal government can facilitate this training without imposing preemptive standards or policies. Public safety is best accomplished at the local level, and providing the resources for training is a simple and straightforward step in the right direction.

Probably one of the biggest supporters [of Oregon peace officer status for Tribal police] that helped us ... was the Oregon Chiefs of Police Association, which I am a member of, and my fellow chiefs are all members of it. They understand the sheriffs' argument, but they thought, "Okay, well, it's an impediment to public safety; so what's the big deal?"

*Tim Addleman, Chief of Police, Confederated Tribes of the Umatilla Reservation
Testimony before the Indian Law and Order Commission, Portland, OR
November 2, 2011*

Most of our Indian lands are not identifiable by signs, particularly the allotted areas. Generally people know if they see a casino that it's Indian country, (whether they're) the public or law enforcement. I can tell you that with many of our casinos, it does become confusing at times. We have casinos that have adjoining motels. The motel is not Indian country, yet it's all one building. And so you can move into and out of Indian country without even leaving a building. Obviously our parking lots are very similar. And we work in partnership with our local law enforcement to address a lot of these crimes.

*Jason O'Neal, Chief of Police, Chickasaw Nation Lighthorse Police Department
Testimony before the Indian Law and Order Commission, Oklahoma City, OK
June 14, 2012*

So when we realized how big of a problem we had, we had to attack it from both sides. We had to educate the Tribal community about us as service providers, but we also had to educate our department about the communities we were serving.

*Ray Wood, Lieutenant & Tribal Liaison, Riverside County Sheriff's Department
Testimony before the Indian Law and Order Commission, Hearing on the Agua Caliente Reservation, CA
February 16, 2013*