



Impact of Oregon Police Bills on Tribal Law Enforcement

Co-Chairs Sen. Manning and Rep. Bynum and members of the Joint Committee On Transparent Policing and Use of Force Reform,

As we stated in previous testimony before you, Tribal governments across Oregon and the nation are having similar discussions and reviews of law enforcement. Tribal police officers are known for their deep connections to their community, and we are dedicated to meaningful review and continual improvement as sovereign nations.

The Confederated Tribes of the Umatilla Indian Reservation and the Columbia River Inter-Tribal Fish Commission have reviewed the legislative concepts drafted by the committee, as well as re-reviewed legislation recently passed in the special session, to analyze the impact on tribal sovereignty. Below is our analysis and our joint request for language changes needed to maintain tribal sovereignty.

We appreciated the ability to present to your committee on the unique considerations of tribal policing, as well as your commitment to government-to-government consultation to get these legislative concepts right.

Input on new LC's

[LC 742](#): Regulates use of chemical incapacitants, kinetic impact projectiles, and sound devices by law enforcement; prohibits use of pepper spray unless a riot declaration has been made by a mayor or their designee, or, in jurisdictions not governed by a mayor, by the sheriff.

There is concern among tribal and state law enforcement that section 3 may disrupt or preclude state law enforcement agencies from working with tribal law enforcement agencies. This could be clarified by adding a section (3)(2)(c) "Nothing herein is intended to preclude a law enforcement agency from working with or otherwise assisting a tribal law enforcement agency."

Otherwise, this should not directly or indirectly impact tribal sovereignty as long as the definition of "law enforcement agency" in Section 2(1)(d) remains the same, as it was defined in HB 4208.

[LC 743](#): Requires a peace officer in official duties to wear white or light blue shirts and navy pants unless working undercover or on a SWAT or CERT team.

LC 743 needs to be amended to exclude tribal officers in order to maintain tribal sovereignty. This can probably be done easiest by amending Section 1(4) to explicitly exclude a tribal police officer under ORS 133.005(g). The same needs to happen in Section 2(4)(b). It also needs to be amended to exclude tribal law enforcement agencies. This is probably easiest by amending section 2(4)(a) to exclude tribal law enforcement agencies under ORS 181A.010(7)(c).

[LC 744: Requires reporting of police misconduct to supervisors or another relevant person \(if the misconduct was committed against a member of the public\).](#)

It might be easiest to just add a section that says it does not apply to tribal law enforcement agencies or tribal police officer conduct. More analysis:

If LC 745 is changed accordingly, we think the misconduct portion of this would be okay. However, the mandate to intervene when observing misconduct needs to be amended to exclude a DPSST certified tribal officers' on-reservation conduct. More analysis:

1. Tribal law enforcement agencies are covered by the DPSST standards as they are included as a "law enforcement unit" in ORS 181A.355 so there could be indirect consequences to tribes.
2. Regarding inclusion of "unjustified or excessive force that is objectively unreasonable" within misconduct shouldn't be problematic if HB 4203 excludes tribal officer on-reservation conduct. Presumably if a tribe chose to permit the kind of use of force otherwise prohibited by HB 4203 it would not amount to misconduct when performed within Indian country.
3. Section 2(2) through (5), which deal with officer intervention to prevent another officer from engaging in misconduct, would arguably apply to a tribal officer that is DPSST certified even for on-reservation conduct. Consider amending this section to exclude application to tribal officer on-reservation conduct.

[LC 745: Removes the exemption of "where officers are authorized to use deadly force" for the use of chokeholds.](#)

This could indirectly impact on-reservation tribal police conduct. We've tried to highlight the issues and suggest work arounds.

1. The exclusion of force that involves applying pressure on the throat or neck of a person that impedes normal breathing or blood circulation unless it is justified in the deadly use of force provisions applies to tribal officers when acting as police officers off reservation. It shouldn't apply to on-reservation conduct unless there is concurrent state PL 280 criminal jurisdiction.
2. Consider amending to add, "Except for tribal officers" or "Except for tribal officers using physical force while in Indian country,"

[LC 746: Establishes the Commission on Statewide Law Enforcement Standards of Conduct and Discipline.](#)

The arbitration provisions in this proposal should not impact sovereignty as it involves public employers (which do not include tribal law enforcement agencies). However, with regard to establishing a commission on standards of conduct and discipline it needs to have at least one tribal law enforcement position included among its membership, which should not count toward the limit of 3 law enforcement officer members.

[LC 748: Modifies requirements for database of disciplinary and certification actions relating to police officers and reserve officers established by Department of Public Safety Standards and Training.](#)

For the reasons listed in the HB 4207 comments below, this concept also needs amending. Consider amending Section 3(1)(b) and(c) to exclude tribal law enforcement agencies and tribal police officers recognized as police officers under SB 412.

Additional Reflections on HB 4207, previously passed in the last special session:

This creates an online misconduct database. It should exclude tribal officers unless tribes specifically request inclusion of their officers by resolution. More analysis:

1. This bill creates an online database of DPSST certification suspensions and revocations. This would impact tribal officers who are DPSST certified. To respect tribal sovereignty and the choice of the tribe as to whether they want to include their DPSST certified officers in the database, consider adding a subsection 3 to Section 2 that excludes DPSST certified tribal officers from the database unless a tribal nation has authorized inclusion of their officers in the database by resolution.
2. Section 4 deals with personnel matters and access to personnel records that significantly impact tribal sovereignty. The definition of “law enforcement agency” in Section 4(1)(a) should be amended to exclude tribal law enforcement agencies like was done in HB 4208.