

**STATEMENT OF HOWARD ARNETT, TRIBAL
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WARM SPRINGS RESERVATION OF OREGON**

REGARDING SB 731

Before the Senate Committee on Judiciary and Ballot Measure
110 Implementation

Oregon Legislative Assembly

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Good morning, Chairman Prozanski and members of the Committee. My name is Howard Arnett. I am a lawyer in Bend and for the past forty years I have served as a Tribal Attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon. I also serve as a Professor of Practice at the University of Oregon School of Law where I teach classes on Federal Indian law and related subjects. I am here today to testify in support of SB 712, as well as explain the legal reason why it is important that the Legislature pass this bill. I would also be happy to answer any questions you may have.

The Warm Springs Indian Reservation is, in many respects, a sovereign nation within the boundaries of the state of Oregon. Warm Springs and the other eight federally recognized tribes in Oregon have authority to make their own laws and be governed by them. This is an aspect of the tribes' inherent sovereignty,

which pre-exists the founding of the American Republic, recognized by treaties, Congress, the federal Constitution and two centuries of U.S. Supreme Court rulings. The Warm Springs exemption from state laws stems from the Treaty of June 25, 1855 that established the Warm Springs Reservation, and was confirmed by Congress in 1953 when the Warm Springs Reservation was expressly excluded from the federal statute, Public Law 280, extending Oregon's criminal laws to most Indian reservations in the state.

Law enforcement on the Warm Spring Reservation from its establishment in the mid-19th Century until the mid-20th Century was the responsibility of federal Indian police. In the mid-20th Century, the Tribe took over responsibility for public safety on the reservation and the Warm Springs Tribal Police Department has continued to provide that essential governmental service ever since. Warm Springs police officers receive their law enforcement training at either the Oregon State Police Academy, which they have attended since 1972, or at the U.S. Indian Police Academy (IPA), run by the federal Bureau of Indian Affairs, in Artesia, New Mexico.

Warm Springs Police officers enforce tribal criminal and civil laws, and also federal laws, within their territorial jurisdiction. Occasionally, Warm Springs police officers are called to service outside their territorial jurisdiction in areas where state law applies, such as when they are first responders to an off-reservation motor vehicle accident, or are members of a multi-agency drug enforcement team, or are in "hot pursuit" of suspected criminal conduct that began on the reservation. In those instances, the Warm Springs officers may be called on to enforce state law. Once such instance in January, 2005 led the

Oregon Legislature in 2011 to enact Senate Bill 412. That instance involved a Warm Springs officer in “hot pursuit” of a criminal suspect from the reservation to a location several miles outside the reservation where the suspect was stopped, arrested and charged with the state law crimes of “attempting to elude a police officer” and “resisting arrest by a peace officer”. The Oregon Court of Appeals, however, in February, 2010, ruled that the arresting Warm Springs tribal officer was not within the definitions in Oregon statutes of a “police officer” for purposes of the “attempting to elude” crime nor was he a “peace officer” for purposes of the “resisting arrest” crime. The charges were dismissed.

Senator Prozanski and then Republican Senate Leader Ferrioli immediately saw the threat to public safety posed by the Oregon Court of Appeals ruling and introduced legislation in the 2011 session to amend the two criminal statutes at issue in the Court of Appeals ruling, as well as other ORS definitions of “police” and “peace” officers, to expressly include Oregon’s tribal officers. SB 412 was enacted at the conclusion of the 2011 legislative session. Although the bill originally had a four year “sunset” provision, the Legislative Assembly in 2015 passed SB 343 to make the law permanent.

SB 412 requires that certain things happen in order for tribal officers to be considered “police officers” and “peace officers” under Oregon statutes and able to enforce Oregon’s criminal code. Those requirements are now set out in ORS 181.610 to 181.712. Among other things, these statutes require a tribal government seeking SB 412 authority for its tribal officers to provide a tribal court forum for tort claims against tribal officers exercising SB 412 authority, provide liability insurance equal to

or greater than state tort claim limits to cover such claims, keep public records of tribal police activities that involve use of SB 412 authority, and other requirements. SB 412 charged DPSST with responsibility for determining if and when an Oregon tribal government has met the requirements of SB 412 so that its officers could, when needed, exercise SB 412 authority and enforce Oregon's criminal laws. To date, DPSST has certified that all Oregon tribal governments providing law enforcement services are in compliance with SB 412 requirements. To my knowledge, SB 412 has been implemented smoothly and successfully and without controversy since its enactment.

The way SB 412 works is straight forward. Let me use Warm Springs to illustrate. Warm Springs law enforcement officers wear two "hats"; most of the time they are enforcing tribal (as well as federal) law within their territorial jurisdiction and with respect to tribal members exercising tribally regulated 1855 Treaty fishing and hunting rights outside the reservation. That is their "tribal hat" and in carrying out that authority they are subject to tribal law and applicable federal law, and not subject to state law or regulation. Most, but not necessarily all tribal officers have a need to also wear a second hat, their "SB 412 hat". Those officers, as required by SB 412, have successfully completed training at the DPSST academy and are authorized to use their SB 412 authority to make state law arrests where the criminal conduct is within the jurisdiction of Oregon state courts. If a tribal officer has not successfully completed DPSST training (e.g., Warm Springs corrections officers do not attend DPSST training) he/she is not empowered to wear the second "SB 412 hat" and make state law arrests.

The purpose of SB 731, now before the Committee, is to make the SB 412 process described above crystal clear. Warm Springs officials have reviewed with some alarm the many “police reform” bills now before the Legislature, which, in some instances, seek to apply the “reforms” to all “police” and “peace” officers, as those terms are defined in Oregon’s criminal code but without acknowledging that those terms’ inclusion of tribal officers is limited by SB 412. In some instances, the bills’ proponents expressly seek to have the “reforms” applied to tribal officers in connection with all of their duties, even when the tribal officers are not wearing their “SB 412 hat”, which is most of the time. Such legislation, if enacted, would be an intrusion into matters exclusively within the sovereign realm of the Warm Springs tribal government. That should not happen and cannot happen under federal law. SB 731, if enacted, will make it clear that it won’t happen.

Thank you.