

Tribal-State Law Enforcement Relations

Tribal Law and Order Commission
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Stephanie Striffler
Oregon Department of Justice
Native American Affairs Coordinator

I. Oregon Framework

A. Tribes

There are nine federally recognized tribes in Oregon. Each one is different in terms of history, lands, governmental structure, criminal jurisdiction, law enforcement and tribal courts.

History. Many of the Oregon Tribes were terminated in the 1950s and were congressionally restored in the 1970's or 1980's. Beginning with the Confederated Tribes of the Siletz in 1977, the second restored tribe in the United States, terminated Oregon tribes began to secure federal legislation to restore them to federal status. The terms of restoration depend on the specific restoration legislation. Other Oregon tribes restored were the Cow Creek Band of the Umpqua Tribe, 1982, Confederated Tribes of the Grand Ronde, 1983, Confederated Tribes of Coos, Lower Umpqua and Siuslaw, 1984, the Klamath Tribe, 1986, and the Coquille Indian Tribe, 1989.

Tribal lands. The nine tribes have tribal lands in at least 15 counties in Oregon, with differing configurations of tribal lands.

One reservation (the Confederated Tribes of the Umatilla Indian Reservation) is a checkerboard reservation. The Warm Springs reservation is a contiguous reservation.

Many other tribal lands are more scattered, being acquired or reacquired in the process of restoration.

Public Law 280/Jurisdiction. Under Public Law 280 the State of Oregon has criminal jurisdiction on lands of six of those tribes.

(Public Law 280 exempted the Confederated Tribes of the Warm Springs Reservation. The Burns-Paiute Tribe and Confederated Tribes of the Umatilla Indian Reservation obtained exemptions through retrocession.)

Police. Five of the tribes currently have tribal police forces. Others are planning tribal police forces.

Courts. All nine tribes have tribal courts, with different jurisdiction exercised. Many Oregon tribal courts are rapidly evolving and expanding jurisdiction. and in the process of expansion.

II. State and Local Law Enforcement Officials

State Criminal law is enforced by multiple local and state officials: County sheriff, County District Attorney, City Chief of Police, Oregon State Police, Oregon Attorney General.

III. Tribal-State Government to Government Relations

A. Executive Order 96-30 (1996) "State/Tribal Government-to-Government Relations"

1. *"There are nine federally recognized Indian tribal governments located in the State of Oregon. These Indian tribes were in existence prior to the formation of the United States of America, and thus retain a unique legal status. The importance of recognizing the relationship that exists between the tribes and state government can not be underestimated."*
2. Purpose: to establish a process which can assist in resolving potential conflicts, maximize key inter-governmental relations and enhance an exchange of ideas and resources for the greater good of all of Oregon's citizens, whether tribal members or not.
3. Requirements for state agencies include:
 - a. Development of departmental statement recognizing tribal interest in state policies affecting tribal interests
 - b. Identification of agency "key contacts" responsible for coordination with tribal governments. *See* http://www.leg.state.or.us/cis/key_contacts/agencies_and_clusters.pdf (Legislative commission on Indian Services webpage)
 - c. Annual meeting between the Governor, tribal leaders and representatives of state and the nine federally recognized Oregon tribes
4. The Executive Order encourages government to government agreements

B. ORS 182.162-166 (SB 770 2001)

1. Purpose: to promote positive government to government relations between the state and tribes
2. Requirements of state agencies include:
 - a. Written policy regarding tribal relations
 - b. Identification of state agency programs affecting tribes and personnel who deal with tribes
 - c. Inclusion of tribes in development and implementation of programs that affect tribes
 - d. Annual training regarding legal status of tribes, legal rights of tribal members, and issues of concern to tribes
 - e. Written report on implementation
3. Annual meeting convened by the Governor.

C. Cluster Groups/Public Safety Cluster

Under the process established pursuant to the Executive Order and statute, tribal-state “cluster groups” meet regularly to address issues of mutual interest.
http://www.leg.state.or.us/cis/key_contacts/agencies_and_clusters.pdf

Those groups included the Public Safety and Regulation Cluster, which includes representatives from tribes (often but not always the tribal police chief) and representatives from state agencies, including the Oregon Youth Authority, Oregon State Police, Department of Justice, Department of Corrections, Department of Public Safety Standards and Practices, and the Board of Parole and Post-Prison Supervision.

The Public Safety Cluster does not include federal or local law enforcement officials, but from time to time invites them to participate.

IV. Examples of Cooperation

- A. Oregon Youth Authority Memoranda of Agreement
(Responsible for youth offenders and other functions related to state programs for youth corrections).
 - OYA and Tribe agree to notify each other when tribal youth enter OYA custody
 - OYA seeks tribal input regarding planning, including religious services and transition planning
 - Tribal representative participates in multi-disciplinary team

B. Confederated Tribes of Umatilla Indian Reservation Tribal Law Enforcement Jurisdiction Task Force

1. Tribal representatives met with Governor's Legal counsel, Attorney General's Office, Oregon State Police to review and update law enforcement coordination agreements

2. Law Enforcement Receptions

Hosted by tribe

State, local, tribal, federal law enforcement attendees

Distribute copies of current law enforcement coordination agreements

C. Klamath Tribes Civil Rights and Equal Justice Committee

Worked out protocol with District Attorney's office for alternatives for tribal youth offenders.

V. Recent Oregon case law re tribal officer authority

A. State v. Pamperien, 156 Or App 153 (1998)

This case involved a challenge to the authority of a Warm Springs tribal police officer to stop a non-Indian on Highway 26 within the boundaries of the reservation. After a traffic stop, the officer discovered the driver's license was suspended and there was an outstanding warrant for felony driving while suspended. The officer arrested him. The defendant moved to suppress all evidence of the stop, arguing that the officer did not have authority to make a traffic stop under ORS 810.410.

The Court of Appeals found that the authority of tribal police to stop drivers for speeding within the reservation "derives from the tribe's inherent power as sovereign to maintain public order on the reservation" by investigating violations of state law on the reservation. Therefore, "Warm Springs tribal law enforcement officers have the authority to investigate on-reservation violations of state and federal law as part of the tribe's inherent power as

sovereign and may detain violators and turn them over to the proper officials if jurisdiction to prosecute the offense rests outside the tribe.”

The concurrence thought the case should be resolved as a matter of statutory interpretation, stating that the tribal officer fit within the definition of “police officer” in ORS 801.395, which is a non-exclusive list. (That statute says “Police officer’ includes a member of the Oregon State Police, a sheriff, a deputy sheriff or a city police officer.”)

B. *State v. Schaff*, 185 Or App 61 (2002), *rev den* 335 Or 355 (2003)

This case involved a challenge to a Burns Paiute tribal officer’s authority to administer a breathalyzer test after stopping a driver on reservation. The defendant argued that the tribal officer was not qualified to administer the test, because she was not a “police officer” who was authorized to have a permit to administer a breath test under the Oregon Vehicle Code, ORS 801.395. That statute says “Police officer’ includes a member of the Oregon State Police, a sheriff, a deputy sheriff or a city police officer.” The trial court granted defendant’s motion to suppress the results of the breath test.

The Oregon Court of Appeals reversed. The court found that the tribal officer had a valid permit to administer the breath test regardless whether she was a “police officer” within the meaning of the statute. The court did not address whether ORS 801.395 includes tribal officers in its definition of “police officer”.

C. *State v. Oakes* 193 Or App 341 (2004)

This case involved a cross-deputized Coquille police officer who stopped a motorist off tribal lands. The officer was driving a marked Coquille Tribal Police vehicle. The defendant fled, and was charged with attempting to elude a police officer. The defendant argued that the tribal officer was not authorized to make the stop because he could not act as a Coos County Deputy Sheriff and was not wearing a Coos County Sheriff’s Department uniform. The trial court granted the defendant’s motion to suppress evidence of the stop. The court relied in part on *State v. Beaman*, 42 Or App 57 (1979), in which an off duty deputy sheriff working as an OSU Campus Security Officer made an arrest.

The Court of Appeals reversed, finding that the officer fell within the definition of “police officer” in ORS 801.395, as a deputy sheriff. The court went on to find that the failure to display identification as a deputy sheriff did not warrant suppression of evidence derived from the stop.

D. *State v. Jim* 178 Or App 553, *rev dismissed* 335 Or 91 (2002)

This case involved a county deputy sheriff stop and arrest of a Yakama tribal member for driving offenses committed on a public road in Celilo Indian Village. The defendant claimed that the state did not have authority to prosecute him, arguing that Celilo Indian Village was not subject to Public Law 280. The defendant argued that because Celilo Village was held in trust for three tribes, including the Confederated Tribes of the Warm Springs Reservation, that Celilo Village was part of the Warm Springs Reservation, and thus exempt from Public Law 280. The Oregon Court of Appeals disagreed, citing its earlier decision in *State v. Jim*, 81 Or App 177 (1986), rev den 302 Or 571 (1987). In that case, the Court of Appeals had stated that Celilo Indian Village was "not a part of the reservation of any particular tribe."

E. *State v. Kurtz*, 350 Or 65 (2011)

The Oregon Supreme Court held that a tribal police officer, who was attempting to effectuate a traffic stop that started on the Warm Springs Reservation but concluded off of the reservation, qualified as a "police officer" under the attempt to elude statutes, and as a "peace officer" under the resisting arrest statute. The court reversed the decision by the Court of Appeals, which had held that only officers employed by *Oregon* governmental entities met the definitions of police and peace officers.