



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

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***"Courteous Vigilance"***

JANICE K. BREWER ROBERT C. HALLIDAY  
Governor Director

## **The Arizona Department of Public Safety in Arizona's Indian Country**

Chairman and members of the Commission, panelists and guests, thank you for the opportunity to speak today. I am Major Larry Scarber, Southern Highway Patrol Bureau commander and Tribal Liaison for the Arizona Department of Public Safety.

### **History and Mission of DPS**

Pursuant to legislation in 1968, the Arizona Department of Public Safety was established by the executive order of Governor Jack Williams on July 1, 1969.

In its 40-plus years of sustained progress and service, the Department has accepted many additional responsibilities and has become a multi-faceted organization dedicated to providing state-level law enforcement services to the public while developing and maintaining close partnerships with other agencies sharing similar missions.

The Department consists of three divisions - Highway Patrol, Criminal Investigations, and Support. Together these divisions provide an immense and extensive range of vital scientific, technical, operational and regulatory services to Arizona residents and to the state's criminal justice community. The Arizona Department of Public Safety, with state headquarters in Phoenix, has offices located in more than 30 communities within Arizona's 15 counties.

Director Robert Halliday heads the Department of Public Safety, which includes approximately 1,928 employees, of which 1,093 are sworn peace officers.

### **Unique Status of Indian Country Law Enforcement**

Since Arizona is not a Public Law 280 state, absent the sharing of jurisdictional authority by a tribal nation or community, non-federal and non-tribal law enforcement agencies lack criminal jurisdiction over Native Americans for crimes committed in Indian country. This fact has often been misunderstood, both by the public and by law enforcement personnel. Even when understood, it has sometimes been ignored.

### **Current State of DPS-Tribal Relations**

The Department of Public Safety has taken steps for its members to better understand the jurisdictional maze relating to Indian country. This is important because almost all DPS officers work or will work on or in close proximity to Arizona's Indian country.

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Since the late 1990s and continuing to the present, the Department of Public Safety has sent dozens of officers, supervisors, and commanders to the 20 hour Criminal Jurisdiction in Indian Country course presented by the BIA Indian Police Academy and the United States Attorney's Office.

A 2001 summit sponsored by the International Association of Chiefs of Police, and attended by then-DPS Director Dennis Garrett, identified numerous recommendations for improving safety in Indian country. Among them was that "Tribal, federal, state and local law enforcement agencies should pursue cross-jurisdictional cooperation whenever and however it is possible." Additional recommendations included:

- Tribal, federal, state and local agencies should convene regularly scheduled meetings to discuss problems, share information and focus on collaborative cross-jurisdictional solutions.
- Tribes and states should recognize each other's properly trained officers wherever there is concurrent jurisdiction between a tribe and a state.
- All law enforcement officers working in Indian country should receive specialized training about Indian country.<sup>1</sup>

Portions of these recommendations had been previously accomplished or initiated in the State of Arizona. In 1972, Arizona first granted full arrest powers to tribal police officers. In 1991, Arizona Revised Statute 13-3874 was amended to its current form:

*A. While engaged in the conduct of his employment any Indian police officer who is appointed by the bureau of Indian affairs or the governing body of an Indian tribe as a law enforcement officer and who meets the qualifications and training standards adopted pursuant to section 41-1822 shall possess and exercise all law enforcement powers of peace officers in this state.*

*B. Each agency appointing any Indian police officer pursuant to this section shall be liable for any and all acts of such officer acting within the scope of his employment or authority. Neither the state nor any political subdivision shall be liable for any acts or failure to act by any such Indian police officer.*

This statutory language was included in a 2006 IACP publication as an example of a promising practice for other states to model.<sup>2</sup>

Since 2000, DPS has assigned a representative to serve as Tribal Liaison. I received and have retained that appointment through three directors. I regularly attend meetings of the Indian Country Intelligence Network (ICIN), an organization of Arizona tribal police administrators and investigators, and supporting agencies dedicated to cooperation in enforcement, training and information sharing. ICIN was organized in 1994, under the auspices and with the continued administrative support of the Inter-Tribal Council of Arizona. Arizona ICIN is a national role-model in uniting tribal, federal, state and local agencies in discussing problems, sharing information and pursuing collaborative cross-jurisdictional solutions.<sup>3</sup> With my agency's support, I am also an active member of the

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Indian Country Law Enforcement Section of the International Association of Chiefs of Police.

In 2002, ICIN and Arizona Peace Officer Standards and Training collaborated in the creation of a training video for statewide officer training, entitled *Law Enforcement in Indian Country*. Director Reina and I, along with numerous other participants from tribal, federal, state and local law enforcement agencies, participated in the creation of this training, with the intent of providing a historical background of Indian country jurisdiction and dispelling some of the myths about tribal law enforcement.

In 2003, DPS finalized the general order, or policy statement, *Enforcement in Indian Country*,<sup>4</sup> which provides guidelines for officers on their activities on Indian country. Prior to final acceptance, this policy was reviewed and edited by several prominent tribal police chiefs and administrators.

In 2006, then-Governor Janet Napolitano issued Executive Order 2006-14, *Consultation and Cooperation with Arizona Tribes*.<sup>5</sup> This Executive Order required executive branch agencies (including DPS) to establish consultation policies to "guide their work and interaction with federally-recognized Tribes in Arizona".<sup>6</sup> Additionally, agencies were required to designate a staff member to act as the principle point of contact for tribal issues. Governor Janice Brewer has continued this policy with agency tribal liaisons reporting interactions with the Tribes, Communities and Nations quarterly to the Executive Director of the Arizona Commission of Indian Affairs.<sup>7</sup>

DPS actively strives to enter into cooperative agreements with Arizona's Indian nations for the sharing of law enforcement services. Because of the unique sovereign status of the Tribal Nations, DPS officers have no jurisdiction over Native Americans in Indian country unless the Tribal nation specifically grants that authority. This can be done through commissions or cross-deputization or through intergovernmental agreements, or a combination of the two. Some of the Tribal nations choose to exercise their sovereign powers by sharing authority. Others exercise their sovereignty by retaining that authority and DPS honors both. However, our ability to support agencies in law enforcement missions is severely restricted when no agreement exists.<sup>8</sup>

Current intergovernmental agreements exist between DPS and the Fort McDowell Yavapai Nation, Fort Mohave Tribe, Gila River Indian Community, Hualapai Tribe, San Carlos Apache Tribe, and the White Mountain Apache Tribe. A previous agreement with the Cocopah Indian Nation is up for renewal. An agreement with the Navajo Nation which would provide for the commissioning of DPS officers working on and around the Nation has been signed by Governor Brewer and is currently in Window Rock undergoing the approval process. Discussions have begun with the Tohono O'odham Nation regarding a limited agreement for assistance in their remote San Lucy District.

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DPS provides any interested Tribal nation with sample copies of existing agreements for their consideration.

### **Future Considerations**

Indian country comprises roughly 29% of Arizona's total land area. With over 33,400 square miles of area, Arizona's combined Indian country is larger than South Carolina, or West Virginia, or Maryland, or seven other states. Arizona DPS' current mutual aid agreements include only 6 of our 22 tribal nations and only 23% of the total Indian country land area. Once the agreement with Cocopah is renewed and the agreement with Navajo is finalized we will reach 8 of 22 and 77% of the land area. There is still much room for improvement.

Next week, DPS will staff a booth at the Arizona Indian Nations and Tribes Legislative Day at the Capitol. There we will provide materials about mutual aid opportunities directly to tribal leaders. Although we may never have cooperative agreements with 100% of Arizona's tribal nations, we would at least like to make the opportunity available to all. As one of the larger agencies in the state, and with resources spread throughout the state, we can provide specialized resources that might be beyond the reach of some of the smaller or more remote tribes. These include SWAT, Haz-Mat, Gang Enforcement, and Special Investigations teams, critical incident support, air rescue, mobile field force and forensics.

### **Summary**

It is an honor to address this commission. It is a greater honor to work closely with Arizona's Indian country law enforcement professionals. For states or agencies that wish to model some of the successes we enjoy here, I offer a few final suggestions. First, commit to establishing long-term relationships built on mutual trust. A liaison program can be beneficial as it is allowed to mature and if those involved have a sincere desire to collaborate in mutually beneficial ways. Second, patience is a virtue when working with the tribal nations. I have learned over the past decade that the tribes with which I associate tend to be very deliberate in their actions. I have seen very few rushed decisions or "knee-jerk" reactions. As it was explained to me by a tribal elder several years ago, decisions tend to be made with their children's children's children in mind and what the long-term effects of those decisions will be. Third, if one is working with multiple tribal nations, there is rarely one solution which will fit all. While boilerplate agreements might be easiest, be prepared to tailor any mutual aid agreements to the individual needs of the specific tribe. Finally, enjoy the experience. Although there may be some bumps in the road, I have found my associations with members of the law enforcement community from Arizona's tribes and internationally (U.S. and Canada), through the IACP, to be among the most pleasant of my career.

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### Endnotes

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<sup>1</sup> Improving Safety in Indian Country: Recommendations from the IACP 2001 Summit, p.i, ii

<sup>2</sup> Promising Practices for Improving Safety in Indian Country, IACP & Office of Justice Programs, May 2006, p.4

<sup>3</sup> Ibid., p.6

<sup>4</sup> Appended to the end of this document.

<sup>5</sup> Available online at

[http://azmemory.lib.az.us/cdm4/item\\_viewer.php?CISOROOT=/execorders&CISOPTR=508&CISOBX=1&REC=2](http://azmemory.lib.az.us/cdm4/item_viewer.php?CISOROOT=/execorders&CISOPTR=508&CISOBX=1&REC=2) (accessed January 11, 2012).

<sup>6</sup> DPS Statement appended to the end of this document.

<sup>7</sup> Sample appended to the end of this document.

<sup>8</sup> An example of the severity of this situation occurred in 1999, when Officer Tenny Gatewood, a police officer for the White Mountain Apache Tribe, was shot and killed during a traffic stop on the White Mountain lands. The suspects fled and a manhunt ensued. At the time, DPS had no authority from the Tribe to exercise law enforcement powers. Ultimately, after several hours delay, the U.S. Attorney's Office arranged for an extraordinary temporary federal cross-deputization to occur, allowing DPS to provide needed assistance.

In another example, prior to an agreement with the Fort McDowell Yavapai Nation, a Fort McDowell Police officer responded to a domestic violence call within the Fort McDowell community. At that time, there were no other Tribal officers available and the suspect was threatening violence against the officer. The Police Department requested that a nearby DPS officer respond to assist. Due to the lack of jurisdiction, this request was denied. Fortunately, the Fort McDowell officer was not injured. However, it demonstrated the need for cooperative agreements.



SUBJECT: **Enforcement in Indian Country**  
DATE: February 12, 2003  
SUPERSEDES: New Order

GENERAL  
ORDER  
NUMBER  
**4.2.100**

## **I. Purpose**

This general order establishes guidelines for enforcement activities in Indian country by DPS sworn personnel.

## **II. Policy**

Sworn personnel conducting enforcement activities within the boundaries of Indian country shall limit their activities according to the commissions which they hold and intergovernmental agreements (IGA) between the State of Arizona and the Tribe on whose lands the enforcement action takes place. Department personnel are expected to be professional and courteous when performing their duties in Indian country and conduct themselves in a manner which will foster positive relations with all American Indians and their communities.

## **III. Definitions**

- A. *American Indian*: An individual having some identifiable Indian ancestry, and is enrolled or eligible to be enrolled as a member of a federally recognized Indian tribe.
- B. *BIA*: Bureau of Indian Affairs, a bureau of the U.S. Department of the Interior.
- C. *Commission*: Certification or credentials granted by a governmental entity, declaring an officer has specific enforcement authority.
- D. *Indian country*: All land within any reservation, under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and, all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

## **IV. General Provisions**

- A. American Indians will generally have a Tribal or federal enrollment card, identifying them as a member, or as eligible to be a member of a tribe. When a subject has no such identification (Navajo Nation does not issue enrollment cards), but can be reasonably identified as an American Indian, they should be treated as such.

- B. Officers may take typical enforcement action on non-American Indian persons contacted within Indian country.
- C. Officers taking enforcement action on American Indians within Indian country are responsible to complete and route the appropriate reports to tribal authorities to enable timely prosecution.
- D. Officers shall respond to tribal subpoenas as they would to any other subpoena issued by a state court.
- E. Officers are bound by General Orders 4.1.10, *Use of Force* and 4.1.20, *Pursuit Operations*, and applicable state laws, if a driver fails to stop upon an officer's visual and audible signal. If engaging in a pursuit within the boundaries of Indian country, officers should consider additional hazards of livestock, road conditions, and pedestrians, which are common to rural Indian country settings.
- F. Officers may respond to requests to assist tribal or federal officers within the right of way of a state or federal highway within Indian country when the request is limited to action involving non-American Indian subjects or acting pursuant to a mutual aid agreement.
- G. Officers shall not violate DPS policies or procedures, state law, or the civil rights of any person, while acting under the direction of any tribal or federal officer.

**V. Officers without Supplementary Commission(s)**

Officers not possessing BIA or tribal commissions for a specific tribe lack jurisdiction over members of federally recognized American Indian tribes within Indian country. Only a commission grants officers authority to enforce tribal laws on American Indians within Indian country. An IGA between the State of Arizona and the Tribe may also grant this authority, but it cannot be expected that all agreements will be alike.

- A. Officers may make contact with American Indians within Indian country based upon reasonable suspicion. Upon determining that the subject of the contact is American Indian, further action taken will be as follows:
  - 1. If the violation is minor and the officer determines that a verbal warning may be appropriate, the subject will be released. The officer shall document the traffic stop in accordance with GO 4.2.30, *Racial or Ethnic Profiling in Traffic Enforcement*.
  - 2. If the subject presents a hazard to self or the public, or is not capable of driving safely, the subject may be detained. Tribal police shall be immediately notified and the subject released to Tribal police for final disposition.

- B. If a pursuit originating outside Indian country proceeds into Indian country, Tribal police will be immediately notified. If the suspect is American Indian, officers shall detain the suspect and ascertain from the Tribal police if an extradition procedure exists. If there is an extradition procedure, the suspect will be released to Tribal police and the primary officer shall initiate extradition through the Tribal government.
- C. In the event no extradition procedure exists, there may be a Tribal court or administrative policy in place that addresses extradition. Before removing an American Indian subject, officers will confirm with a supervisor of the Tribal police that the subject may be legally transported and charged in the appropriate jurisdiction where the violation occurred, outside of Indian country.

#### **VI. Officers Possessing BIA Commission**

- A. The BIA commission:
  - 1. Allows officers to enforce federal criminal laws within the boundaries of Indian country.
  - 2. Protects officers by allowing federal prosecution of anyone assaulting an officer within the boundaries of Indian country.
  - 3. Provides federal protection in the event a tort claim is filed against an officer.
- B. Officers with only a BIA commission lack jurisdiction over members of any federally recognized Indian Tribe in all traffic and misdemeanor cases occurring within the boundaries of Indian country.
- C. If officers observe evidence of a violation of the Major Crimes Act, 18 USC 1153 (information provided by the BIA prior to issuing a commission), the involved American Indian(s) may be detained and transported or held for tribal or federal law enforcement officers.
- D. BIA-commissioned officers may respond to requests to assist a tribal or federal officer anywhere within the boundaries of Indian country, but will act under the direction of that officer.

#### **VII. Officers Possessing Tribal Commissions**

- A. A tribal commission grants officers authority to enforce tribal laws on American Indians within the boundaries of the Indian country in which the commission was issued. An IGA between the State of Arizona and the Tribe may also grant this authority, but it cannot be expected that all agreements will be alike.
- B. Officers may make contact within the boundaries of Indian country based upon reasonable suspicion.



- C. Upon determining that the subject of the contact is American Indian, enforcement action may be taken according to applicable tribal law and through the tribal court having jurisdiction over the subject.
- D. Officers may arrest an American Indian when probable cause exists under tribal or federal law supporting the arrest. Except where prior agreements have been established, efforts should be made to turn the subject(s) over to tribal or federal officers out of respect for tribal self-government. If no tribal or federal officer is available or if no other agreement has been previously established, the arresting officer may transport and book the member at the appropriate tribal detention facility.
- E. Officers holding a tribal commission may respond to requests to assist tribal or federal officers anywhere within Indian Country, but will act under the direction of that officer.

**ARIZONA DEPARTMENT OF PUBLIC SAFETY  
SUBSTANTIVE POLICY STATEMENT**

1. Title or subject of the substantive policy statement:

Interaction with Tribal Governments

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issued: March 2006    Reviewed and reissued: July 2010

3. Substantive policy statement:

It is the Department's policy to promote public safety by developing cooperative relationships with tribal governments. In carrying out this policy, the Department relies on mutual aid, intergovernmental agreements, and memorandums of understanding.

While the Arizona Department of Public Safety is responsible for state level law enforcement, there are 22 tribal governments with sovereignty over approximately 28% of the state land. Issues such as jurisdiction and judicial authority cross political boundaries and require individual agreements customized for each sovereign entity. The costs of services provided by the Department for the exclusive benefit of residents under the sovereignty concept are recovered through direct charges or resources shared in multi-jurisdictional task forces.

The various agreements between the State and tribal governments are the basis for the Department's relations with the tribal communities and govern procedural issues, activities, and services provided under the Department's statutory mandate.

4. A statement as to whether the substantive policy is a new statement or a revision:

Document status:    Revision

5. The name, address, and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:

Name:            Major Larry Scarber

Address:        Arizona Department of Public Safety, Highway Patrol Division  
                    P.O. Box 6638  
                    2102 West Encanto Blvd.  
                    Phoenix, AZ 85005-6638

Telephone:    (602) 223-2354

Fax:             (602) 223-2358

6. Information about where a person may obtain a copy of the substantive policy statement and the cost for obtaining the policy statement:

A free copy of this policy document may be obtained from the Office of the Director at the above address.

07-22-2010



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Governor Director

## TRIBAL CONSULTATION REPORT July 2010—June 2011

### **Project Results and Accomplishments**

- 1) Arizona DPS provided a critical incident support team for a shooting involving Ak-Chin PD officers.
- 2) DPS sent representatives to the Indian Country Intelligence Network (ICIN) meeting in Flagstaff in July. Mr. Todd Griffith, Superintendent of the Scientific Analysis Bureau, reported to Tribal law enforcement on the restoration of FBI funding for Tribal evidence analysis through the AZ DPS Crime Labs.
- 3) The DPS Tribal liaison responded to a concern from Fort McDowell regarding DPS officers going to members' homes within the Fort McDowell Nation for follow-up on warrants. The liaison contacted the supervisor of the warrant unit and explained the concerns and provided him with contact information for a Fort McDowell PD sergeant who will serve as the liaison for any future actions. When it was learned that similar visits had been made to the Salt River Indian Community, notification was made to their police department as well. The liaison met with Fort McDowell Vice President Bernadine Burnette, General Manager Phillip Dorchester, and Chief Jesse Delmar in a follow-up meeting on this incident.
- 4) The Tribal liaison provided information on DPS relations with the Navajo Nation to a representative of the Navajo Nation Supreme Court. They discussed the potential for citing non-members into Tribal court through the use of civil violations (similar to Tribal Game & Fish enforcement on non-members).
- 5) The Tribal liaison participated in the AZ POST teleconference regarding the implementation of SB 1070 and how that might affect Arizona's Tribes.
- 6) The Tribal liaison updated the bylaws of the Indian Country Law Enforcement Section of the International Association of Chiefs of Police (IACP), of which several Arizona Tribal Police Chiefs play a significant leadership role.
- 7) The Tribal liaison participated for the third year as a member of the selection committee for the IACP Indian Country Officer of the Year. Several Arizona tribal police officers were nominated this year. Ultimately, the honor was won by an officer from the Oglala Lakota Nation Police in South Dakota.
- 8) The Tribal liaison and other DPS representatives attended the September ICIN meeting at Ak-Chin.
- 9) Arizona DPS sent a Tribal liaison to the annual conference of the International Association of Chiefs of Police to attend the Indian Country Law Enforcement Section meeting and the Indian Country Officer of the Year award ceremony. The Salt River, Tohono O'odham and Hualapai Police Departments were also represented at the section meeting.
- 10) A DPS representative attended the December ICIN meeting and annual awards ceremony in Phoenix.
- 11) DPS sent six employees to an FBI sponsored training course in November, hosted by the Cocopah Police Department in Somerton.
- 12) The Tribal liaison attended the mid-year meeting of the IACP Indian Country Section in Las Vegas, NV. Arizona Tribes were well represented at the meeting.
- 13) The Tribal liaison and other DPS employees attended the ICIN meeting hosted by the Navajo Police Department in Window Rock. Recently appointed Navajo Division of Public Safety Executive Director John Billison addressed the group.
- 14) In May, the Tribal liaison attended the 20<sup>th</sup> anniversary of the Indian Law Enforcement Officers Memorial Service at the Federal Law Enforcement Training Academy in Artesia, NM.
- 15) At the request of Tohono O'odham Police Chief Joseph Delgado, the Tribal liaison provided a draft mutual aid agreement which, if approved, would authorize DPS personnel in Gila Bend to assist TOPD officers in the community of San Lucy.
- 16) DPS sent an investigation team and a critical incident stress debriefing team to the Navajo Nation in the wake of the shooting death of Navajo Police Sergeant Darrell Curley. DPS also provided an Honor Guard and Bugler for Sgt. Curley's funeral services.
- 17) The DPS Tribal liaison attended a meeting of the Navajo Nation Council Law and Order Committee, at which President Ben Shelly spoke, in reference to mutual aid agreements. DPS has had officers working on the Nation for over three decades pursuant to cross-commissions but absent a mutual aid agreement. A draft agreement has been approved by the Arizona Attorney General's Office and the Governor's Office and has been submitted to the Navajo Nation Department of Justice for review.

Tribal Consultation Report

July 28, 2011

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**Current Projects**

- 1) Ongoing efforts to promote mutual aid agreements with tribal nations and communities.
- 2) Continued efforts to create an agreement between the BIA and State of Arizona to allow BIA Special Law Enforcement Commissions to be issued to DPS officers working in Indian Country with the consent of the affected Tribe.
- 3) Scheduling DPS employees to attend the Criminal Jurisdiction in Indian Country training to gain a better understanding of Indian Country jurisdictional issues.
- 4) Assisting ICIN in exploring videoconferencing opportunities available through state agencies to increase outreach to member police agencies.

For questions or more information, please contact:

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