

# **The Oregon Experience with Tribal Law Enforcement Officers Exercising State Authority**

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# Backdrop

- Oregon is one of six “mandatory” P.L. 280 states: all Indian country in Oregon **except** for the Warm Springs Indian Reservation.
- Warm Springs Reservation: 650,000 acres, 95% trust land, enrollment 5,300 (80% of members live on reservation).
- One state highway (U.S. 26) and multiple BIA and tribal roads. 25 officer Warm Springs Police Department handles almost all reservation law enforcement.

# Backdrop (cont.)

- Of Oregon's other eight tribes, two (Umatilla and Burns Paiute) have retroceded P.L. 280
- Currently six tribal law enforcement departments in Oregon, and one special jurisdiction inter-tribal law enforcement program, the Columbia River Inter-Tribal Law Enforcement office. CRITFE is responsible for off-reservation treaty fishing rights enforcement on the Columbia River for fishers from the Warm Springs, Umatilla, Yakama and Nez Perce tribes.
- CRITFE operates in perhaps America's most complex jurisdictional setting: four tribes, two states (one full P.L. 280 and one partial P.L. 280), a dozen very small fishing sites on the Washington shore held to be Indian country by the Washington Supreme Court and a dozen small fishing sites on the Oregon shore with no judicial determination of their Indian country status.





# The Warm Springs Tribal Police State Law Enforcement Problem

Historically, tribal officers' state authority addressed by cross-deputization agreements with county sheriffs of the reservation's two counties. However, the cross deputization agreements have been "hit or miss", mostly miss, depending on the personal relationships between the sheriff and tribal Chief of Police

# The *State v. Kurtz* crisis

Oregon Court of Appeals decision, Feb. 17, 2010, in *State v. Kurtz*, holding that tribal officers were not “police” or “peace” officers under Oregon law, touched off a law enforcement crisis for WSPD officers, both on and off-reservation. No more arrests/citation of non-Indians to state court; no more “hot pursuit” off the reservation of both Indian and non-Indian offenders

# The Legislative “fix” Proposal

Summer and fall of 2010 all Oregon tribes, led by Warm Springs and Umatilla, organized for 2011 Oregon Legislature to enact legislation amending Oregon statutes to define “police officer” and “peace officer” to include Tribal officers.

# The Legislative Process

- The legislative process to “fix” the Kurtz problem began the first day of the 2011 session in January and did not conclude until the last day of the session in June, 2011 with final passage of Senate Bill 412 in the Oregon House by a one-vote margin.
- The legislative process was dominated by the intense opposition of the Oregon State Sheriffs’ Association. Final passage was uncertain (similar legislation failed in the Idaho Legislature about the same time)
- The final legislation, SB 412, was shaped in large part to address the Sheriffs’ objections.



# NEWS

Oregon Legislature - House Democratic Caucus

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**FOR IMMEDIATE RELEASE**

June 29, 2011

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## **Tribal Police Receive Expanded Authority and Responsibility under Senate Bill 412**

SALEM – The Oregon House today passed legislation to foster greater cooperation between Oregon law enforcement and the police forces of the nine tribal nations within the state. SB 412 was passed 33-25.

Hose Co-Speaker Arnie Roblan (D-Coos Bay) said the legislation would provide tribal officers better training and more access to their law enforcement colleagues. The bill would also allow tribal police to conduct their duties off of reservation land.

“This bill improves the relationship between tribal police and Oregon law enforcement officers. It provides Oregon law enforcement with some new allies in their efforts to keep our communities safe. And it allows our tribal police officers to act as peace officers anywhere in the state as long as they are performing their official duties,” said Roblan.

Roblan added he believed the legislation would promote reciprocity, making it more likely that tribal police forces would partner with other Oregon law enforcement personnel. These agreements between the tribes and surrounding law enforcement jurisdictions will allow both Oregon and tribal leaders to develop working relationships to provide better enforcement in both tribal communities and surrounding areas.

“These new tribal police officers will be trained exactly as our state police and local officers. They will have the ability to conduct themselves as any other police officer in the state. And that can only benefit the residents of the tribal lands and Oregon communities who are their neighbors,” said Roblan.

“We can now have conversations to a much deeper degree in developing new ways for our law enforcement communities to work together. SB 412 ushers in a new era of cooperation between our tribes and our local law enforcement officers.”

The bill now moves to back to the Senate for concurrence in amendments.

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# Senate Bill 412

- SB 412 creates an optional scheme for Oregon tribes that want their tribal police officers to have state law enforcement authority:
  - Tribal officers must be trained and certified by state Department of Public Safety, Standards and Training (DPSST).
  - Tribal court must provide a forum for tort claims against tribal officers exercising state authority with tort claim limits the same as state limits.
  - For SB 412 (state authority) arrests, tribal law enforcement must have deadly force policy, provide public access to records, preserve biological evidence and cooperate with state prosecutors in trial and pre-trial proceedings.

**WARM SPRINGS TRIBAL CODE**

**CHAPTER 390**

**SB 412 IMPLEMENTATION**

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# Oregon

John A. Kitzhaber, MD, Governor

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April 9, 2012

Stan Suenaga, Director of Public Safety  
Carmen Smith, Chief of Police  
Confederated Tribes of the Warm Springs Reservation of Oregon  
through  
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Dear Sirs:

As you know, Chapter 644, Oregon Laws 2011 (Senate Bill 412) requires that tribal governments choosing to implement the provisions of that law submit various documents to the Department of Public Safety Standards and Training (DPSST) for filing. Specifically, Section 3 (4) and (5) require the following from those tribes:

- 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 and property damage, and police professional liability insurance policies.

This letter confirms that DPSST has received those documents from your agency. In addition, you have included copies of the **Warm Springs Tribal Code Chapter 390, SB 412 Implementation**. All of those documents will be filed at DPSST and available for inspection and copying under Oregon public records law.

This letter also confirms that as a general practice your agency is in compliance with the requirements of ORS 181.610 to 181.712 applicable to a law enforcement unit as defined in ORS 181.610, and that you have provided the F-8 Affidavits that DPSST requires under the rules that have been adopted to implement the provisions of Chapter 644, Oregon Laws 2011.

Sincerely,

Marilyn Lorraine, Manager  
Standards and Certification Program

# SB 412 Outcome

- All Oregon tribes with law enforcement programs have “opted in” and been certified by DPSST as compliant with statutory requirements.
- Accordingly, all Oregon tribal officers may exercise state “police” or “peace” officer authority anywhere in the state, both within and outside Indian country.
- To date, no tort claims have been filed against tribal officers exercising SB 412 authority and no problems have developed in implementing SB 412. The Sheriffs’ Association now fully supports SB 412.