



WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

Law Enforcement in Indian Country: State Laws and Programs

In 1953, the U.S. Congress ceded criminal jurisdiction on the Indian reservations in Wisconsin (except the Menominee Reservation) to the state. This act of Congress, commonly referred to as Public Law 280, or P.L. 280, made those reservations subject to state criminal law and made county sheriffs, rather than federal marshals, responsible for policing the reservations. At least partially in response to this, the Wisconsin Legislature has put in place a number of programs and laws to facilitate law enforcement in Indian country. This Information Memorandum, the second in a series of three on the subject of law enforcement in Indian country, describes some of these programs and laws.¹ The statutes described are listed in Appendix 1, by year of enactment.

INTER-GOVERNMENTAL COOPERATION

Cooperative law enforcement grants and mutual assistance agreements are two tools the Legislature has created to foster cooperation between county sheriffs and tribes.

COUNTY-TRIBAL COOPERATIVE LAW ENFORCEMENT GRANTS

Following the enactment of P.L. 280 in 1953, county sheriffs in counties including Indian country (apart from the Menominee Reservation) became responsible for providing law enforcement services on those reservations and trust lands. As early as 1955, the Legislature began providing financial assistance to help counties meet this new obligation. In the intervening years, various grant programs have provided support to both county and tribal law enforcement agencies.

In 1983, the Legislature initiated a pilot program using modest grants to foster cooperation between counties and tribes in providing law enforcement services in Indian country. In 1988, the Legislature expanded the pilot program, establishing the County-Tribal Cooperative Law Enforcement Program. [s. 165.90, Stats.] Under the program, a county and a tribe with reservation land in that county may jointly apply for funding to support law enforcement on the reservation. To be eligible for funding, the county and tribe must submit a joint program plan to the Department of Justice (DOJ). To maintain eligibility for the program, a county and tribe must submit a report to the DOJ regarding the execution of the plan from the previous year.

¹ The others in the series are IM-2013-09, concerning tribal sovereignty and criminal jurisdiction in Indian Country, and IM-2013-11, concerning the law enforcement institutions of the tribes located in Wisconsin.

Grants under the program have remained modest. The funds have been used to augment staff or increase patrols on reservations, provide specialized training, purchase equipment, and establish programs to combat the spread of drug use and gang activity on reservations. Observers of the program note that one of the principal benefits of the program is the requirement that the county and tribe meet regularly to develop and implement the program plans. These observers report that these regular contacts have had beneficial effects on county-tribal relations, extending beyond the area of law enforcement.

The most recent DOJ report on the program is shown in Appendix 2.

MUTUAL ASSISTANCE

Wisconsin's mutual assistance statute authorizes law enforcement agencies to respond to requests for assistance from other law enforcement agencies. [s. 66.0313, Stats.] Prior to 2010, this statute did not apply to tribal law enforcement agencies. Legislation enacted that year (2009 Wisconsin Act 264) authorized state, county, or municipal law enforcement agencies to both request assistance from tribal law enforcement agencies and to respond to requests for assistance from such agencies. It assigned responsibility for defending and indemnifying officers in civil actions arising out of a response and responsibility for the costs associated with a response in the same manner as applied to other law enforcement agencies under prior law. That is to say, when requesting assistance, the tribe is responsible for the cost of defending and indemnifying the responding state, county, or municipal officers in any civil action arising from the response and may be responsible for any costs incurred by the responding agency; when the tribe is responding to a request for assistance, the responsibilities are reversed.

To ensure that a tribe's responsibility for the costs of a law enforcement agency that responds to its request for assistance can be enforced, a state, county, or municipal law enforcement agency may not respond to a request for assistance from a tribal law enforcement agency unless one of the following applies:

1. The tribe has adopted a resolution waiving its sovereign immunity to the extent required to allow enforcement of this responsibility in state courts or a resolution that the DOJ determines has the same effect.
2. The tribe maintains liability insurance coverage not less than \$2,000,000 for any occurrence.
3. The responding law enforcement agency has an agreement with the tribal law enforcement agency under which the responding law enforcement agency accepts the responsibility for these costs.

POWERS OF TRIBAL POLICE OFFICERS

Beneficial as cooperation between counties and tribes is, empowering tribal officers to enforce state law is an even more powerful way to enhance law enforcement in Indian country.

ON-RESERVATION

Generally, tribal law enforcement officers do not have jurisdiction to enforce state laws. In Wisconsin, however, a tribal officer may enforce state laws in either of two circumstances. First, the state or a subdivision of the state may grant an officer this power. Most commonly, this will be done by a county sheriff who makes a qualified tribal officer his or her deputy.

Second, an officer who meets the training requirements for certification by the state Law Enforcement Standards Board and agrees to accept the duties of law enforcement officers in this state may, by statute, enforce the laws of this state against any person within the boundaries of the reservation of the tribe that employs the officer, or on off-reservation trust lands of that tribe. [s. 165.92, Stats.] The tribe that employs a tribal law enforcement officer is liable for all acts and omissions of the officer while acting within the scope of his or her employment under this authority. Before a tribal officer may exercise these powers, the tribe that employs the officer must accept this liability in one of two ways: the tribe may adopt a resolution that waives the tribe's sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability; or the tribe may maintain liability insurance similar to that specified in the mutual assistance statute, described above.

The statute does not limit the authority of a county sheriff to depute a tribal law enforcement officer. Further, deputation of a tribal law enforcement officer by a sheriff does not limit the powers and duties granted to the officer by this statute.

OFF-RESERVATION

Wisconsin law authorizes peace officers to take certain actions when outside their territorial jurisdiction in specified circumstances. [s. 175.40, Stats.] For this purpose, "peace officer" includes a tribal police officer with statutory authority to enforce state law on the reservation of the employing tribe, as described above.

In the case of an officer outside his or her territorial jurisdiction while ***on duty*** and on official business, an officer may arrest a person or provide aid or assistance in an emergency situation that poses a significant threat to life or limb or if the officer observes a felony in progress. An officer may exercise these powers only if the officer's employing agency has adopted and implemented written policies regarding the powers and the officer is observing those policies. The policies must address notification to and cooperation with the law enforcement agency of another jurisdiction regarding arrests made and other actions taken in the other jurisdiction.

In the case of an officer outside his or her territorial jurisdiction while ***off duty***, the officer may arrest a person or provide aid or assistance only in an emergency situation that poses a significant threat to life or limb; the statute does not authorize an off-duty officer to respond to a felony in progress. Again, the employing agency must have certain policies in place

In addition, this statute specifies that any peace officer may, when in fresh pursuit, follow anywhere in the state and arrest any person for violating any law or ordinance the officer is authorized to enforce and, when doing so, is considered to be acting in an official capacity.

POWERS OF CONSERVATION WARDENS

Conservation wardens are law enforcement officers, though often not thought of as such, and play a role in law enforcement in Indian country.

TRIBAL CONSERVATION WARDENS

The powers of tribal conservation wardens are much like those of tribal police officers. In general, their powers are limited to those given by the tribe that employs them, and their jurisdiction is limited to Indian persons on the tribe's reservation. However, they may acquire state law enforcement powers through deputation or by statute.

The Department of Natural Resources (DNR) is the entity most likely to depute tribal wardens, though a sheriff could do so as well. The extent of the powers acquired by deputation is specified by the deputing entity, and may not exceed the authority of that entity itself. Consequently, deputation by the DNR would generally be limited to enforcement of state conservation laws and laws related to boating and operation of snowmobiles and all-terrain vehicles (ATVs). Powers conferred by deputation could be further limited by the deputing entity, for example to enforcement of certain specified state laws or to enforcement on the reservation of the tribe that employs the warden.

In addition, a tribal conservation warden potentially could gain statutory law enforcement powers within the employing tribe's reservation, as tribal police officers may, if the warden met the training requirements and the tribe met the other requirements specified in that statute, as described earlier. However, it appears that this option has not been pursued by any tribe.

There are no statutes specific to tribal conservation wardens.

GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION (GLIFWC)

In the 1970s and 1980s, litigation in federal court sought to determine the extent of rights for the harvest of natural resources retained by the Chippewa Indian bands in Wisconsin when the bands ceded territory to the United States in treaties in 1837 and 1842. In a series of orders, the court affirmed the bands' continuing rights to hunt, fish, and gather on off-reservation public lands and waters throughout the ceded territories in northern Wisconsin. The court also approved the Chippewa bands' proposal to adopt an off-reservation conservation code governing their members' exercise of those rights within the ceded territory but outside the boundaries of Chippewa reservations, and to form an inter-tribal agency to enforce that code. GLIFWC is the agency the Chippewa bands created for this purpose.

Legislation in 2007 (2007 Wisconsin Act 27) sought to facilitate the work of GLIFWC wardens. Under prior law, many provisions of the Criminal Code and the conservation and motor vehicle statutes were designed to allow the work of law enforcement officers. Act 27 applied most of these statutes to GLIFWC wardens. In general, the Act applied statutes regarding the protection of officers or interference with law enforcement to all GLIFWC wardens. It applied most statutes regarding the possession or use of firearms and other weapons by peace officers only to those GLIFWC wardens who meet state certification standards. It also gave GLIFWC wardens access to important law enforcement tools, in particular, the state system that allows officers in the field to access information regarding criminal investigations, suspected criminals, outstanding warrants, and similar matters, as well as drivers' license and vehicle registration information, using computers installed in their patrol vehicles.

Act 27 further gave GLIFWC wardens arrest powers comparable to those a peace officer has when on duty and outside his or her territorial jurisdiction. Specifically, it authorized a GLIFWC warden to make an arrest for a violation of state law if the warden is responding to either: (1) an emergency situation that poses a significant threat to life or bodily harm; or (2) acts that the warden believes, on reasonable grounds, constitute a felony. The Act also authorized a GLIFWC warden to render aid or assistance to a Wisconsin peace officer in an emergency or at the request of the Wisconsin peace officer. A GLIFWC warden may take these actions only if all of the following conditions are met:

1. The warden is on duty and on official business.
2. The warden meets the training standards for state and local law enforcement officers and has agreed to accept the duties of law enforcement officers under the laws of this state.
3. GLIFWC has adopted and implemented written policies regarding making felony arrests under state law and rendering aid or assistance to state or local officers.
4. GLIFWC maintains liability insurance coverage not less than \$2,000,000 for any occurrence.

The Act also authorized GLIFWC wardens to engage in fresh pursuit in Wisconsin beyond the ceded territory under specified circumstances.

EXTRADITION—TRIBES NOT SUBJECT TO P.L. 280

Because the Menominee Indian Tribe of Wisconsin is not subject to P.L. 280, the state does not have the power to arrest tribal members on that reservation. Consequently, if a tribal member commits a crime in Wisconsin and flees to the Menominee Reservation, agents of the state cannot arrest that person. Just as the United States enters into extradition treaties with other nations and states enter into extradition agreements with each other, the statutes authorize the DOJ to enter into an extradition agreement with any tribe that is not subject to P.L. 280. [s. 976.07, Stats.]

There is no extradition agreement in place with the Menominee Indian Tribe of Wisconsin at this time. However, at the request of another jurisdiction, the Menominee Tribal Police Department will hold a tribal member on a felony warrant for up to 48 hours, during which time the other jurisdiction may file a request for extradition. The request may be granted subject to review by the Menominee Tribal Court. The Menominee Tribe will consider the extradition request of any jurisdiction, although most requests it receives are from Shawano County.

FULL FAITH AND CREDIT

As cooperation between tribes and counties can facilitate law enforcement on the ground, recognition by the state of the sovereignty of tribal governments and the validity of their actions can facilitate the administration of justice. In this spirit, a number of statutes grant full faith and credit to the acts of tribal governments.

COURT ORDERS AND LEGISLATIVE ENACTMENTS

Under state law, the judicial records, orders, and judgments of a tribal court in Wisconsin and the acts of a tribal legislative body are accorded the same full faith and credit in the courts of this state as the acts, records, orders, and judgments of any other governmental entity, if the tribe that creates the tribal court and tribal legislative body is organized under the federal Indian Reorganization Act and the tribal documents are authenticated, as specified in the statute. The following additional conditions must be met for court records, orders, and judgments:

1. The tribal court is a court of record.
2. The tribal court judgment offered in evidence is a valid judgment, as determined under the statute.

3. The tribal court certifies that it grants full faith and credit to the judicial records, orders, and judgments of the courts of this state and to the acts of other governmental entities in this state.

[s. 806.245, Stats.]

This statute grants full faith and credit to tribal courts in this state only. The grant of full faith and credit to the actions of tribal legislatures, however, is not explicitly limited to those in this state, and so would appear to apply to a tribal legislature in any state.

PROTECTION ORDERS AND INJUNCTIONS

In addition to the general grant of full faith and credit to tribal court orders, Wisconsin law includes specific procedures related to protection orders and injunctions; that is, temporary restraining orders and injunctions issued to protect victims of domestic abuse, child abuse, abuse of vulnerable adults, and harassment. A person subject to a protection order is barred from having contact with the person protected by the order, and other conditions may apply. [ss. 813.12, 813.122, 813.123, and 813.125, Stats.] In addition, a person subject to a domestic abuse injunction, child abuse injunction, or, at the discretion of the court, a harassment injunction, may not possess a firearm. [s. 941.29 (1) (f) and (2) (e), Stats.]

A protection order issued by a civil or criminal court of the United States, an American Indian tribe, or another state is referred to as a “foreign protection order.” A foreign protection order that meets certain requirements is accorded full faith and credit by the courts in this state and is enforced as if the order were an order of a court of this state. [s. 806.247, Stats.] A circuit court in which a foreign protection order is filed must forward the order to the sheriff or other local law enforcement agency. The sheriff or other agency must make the order accessible to officers throughout the state by entering it in the state’s electronic system for sharing such information. A law enforcement officer is required to arrest a person whom the officer has reasonable cause to believe has violated a foreign protection order, regardless of whether the order was filed in circuit court. The prohibition on possession of firearms applies to a person subject to a foreign protection order, regardless of whether the order includes such a prohibition. [s. 813.128, Stats.]

The penalty for violating a protection order is a fine of up to \$1,000, imprisonment for up to nine months, or both. A person who violates a protection order and causes bodily harm to the person protected by the order may be fined up to \$10,000, imprisoned for up to three years and six months, or both. The penalty for violation of the prohibition on possession of firearms is a fine of up to \$25,000, imprisonment for up to 10 years, or both. In contrast, under limits established by federal law, a tribal court may not impose penalties greater than a fine of \$5,000 and one year in jail for any one crime.

Unlike the general grant of full faith and credit, it appears that the treatment of tribal protection orders applies to protection orders of tribal courts in other states. The prohibition on possession of firearms and related penalties, however, applies only to orders issued by a tribal court in this state, except the courts of the Menominee Indian Tribe of Wisconsin.

CONVICTIONS FOR TRAFFIC VIOLATIONS

Wisconsin law authorizes the Department of Transportation and state courts to count a person’s conviction in tribal court of certain tribal traffic offenses for certain purposes, such as determining how long to suspend or whether to revoke a person’s operating privileges and to

determine whether to issue a driver's license or authorize the operation of specific types of vehicles. The statutes also require a state court to count certain convictions in a tribal court as prior convictions for purposes of sentencing a person for a violation of certain state traffic laws.

VITAL RECORDS

The state registrar is required to accept and register valid vital records submitted by tribal courts, and to recognize and honor orders from tribal courts in this state relating to vital records that pertain to tribally related events. [s. 69.035, Stats.] Vital records are certificates of birth, death, divorce or annulment, and termination of domestic partnership, marriage documents, and declarations of domestic partnership. The registrar must execute this duty in a manner consistent with the manner in which vital records submitted by local registrars or city registrars are handled. The statute does not provide guidance as to what constitutes a "valid" vital record.

LIMITS TO THE APPLICABILITY OF FULL FAITH AND CREDIT STATUTES

It is noteworthy that the statutes granting full faith and credit to the actions of tribal legislatures and courts apply only to the actions of tribal institutions that resemble their counterparts in state government. To be recognized, the tribe taking the action must be organized under the Indian Reorganization Act and the act or record must be authenticated by a tribal official. In addition, for a tribal court order to be recognized, the tribal court must be a court of record and the order must be a valid judgment. Similar requirements do not apply to the granting of full faith and credit to most actions and orders of the legislatures and courts of other states, presumably because those institutions closely resemble their counterparts in Wisconsin. There are exceptions to this, however. For example, to be enforced in state court, a protection order of another state's court must meet certain standards. Conversely, the actions of tribal courts in child welfare cases are accepted without such requirements.

In determining whether a tribal court is a "court of record," the circuit court is instructed to find that all of the following apply:

1. The court keeps a permanent record of its proceedings.
2. Either a transcript or an electronic recording of the proceeding at issue in the tribal court is available.
3. Final judgments of the court are reviewable by a superior court.
4. The court has authority to enforce its own orders through contempt proceedings.

In determining whether a tribal court order is a "valid judgment," the circuit court is authorized (but not required, in this case) to examine the tribal court record to ensure that:

1. The tribal court had jurisdiction of the subject matter and over the person named in the judgment.
2. The judgment is final under the laws of the rendering court.
3. The judgment is on the merits.
4. The judgment was procured without fraud, duress, or coercion.
5. The judgment was procured in compliance with procedures required by the rendering court.

6. The proceedings of the tribal court comply with the Indian Civil Rights Act of 1968 under 25 U.S.C. ss. 1301 to 1341.

One result of these requirements is that the orders of traditional tribal courts will not be accorded full faith and credit in the state courts.² For example, if a traditional court issues what amounts to an oral restraining order in a spousal abuse case, that order cannot be filed in circuit court and enforced by state law enforcement officers. Similarly, an oral pronouncement of marriage by a traditional court cannot be registered in the state's vital records.

At least one tribe has addressed this problem. A person subject to a ruling by the Ho-Chunk traditional court can file the ruling in the tribe's court of record, establishing the paper record needed in the state system.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by David L. Lovell, Senior Analyst, on September 23, 2013.

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² Many tribes have courts of record, which closely resemble the state courts. In addition, many tribes retain traditional practices for resolving disputes and punishing transgressions of tribal law or cultural expectations. See IM-2013-11 for a description of traditional tribal courts.

**Selected Wisconsin Statutes Relating to Law Enforcement in
Indian Country, Listed by Year of Enactment**

- 1982. Full faith and credit to Menominee tribal court proceedings and acts of the Menominee tribal legislature. [s. 806.245, Stats.]
- 1982. Extradition agreements. [s. 976.07, Stats.]
- 1983. Recognition of tribal registration of motor vehicles. [s. 341.49, Stats.]
- 1984. County-tribal cooperative law enforcement grant program. [s. 165.90, Stats.]
- 1989. Enforcement of tribal protection orders and injunctions. [s. 813.12 (9), Stats.; repealed in 1996 (see below).]
- 1989. Treatment by state registrar of tribal vital records and tribal court orders. [s. 69.035, Stats.]
- 1990. Consideration of tribal convictions for traffic violations. [s. 343.32 (2) (a), Stats.]
- 1991. Consideration of tribal convictions for traffic violations. [Numerous statutes.]
- 1991. Full faith and credit to all tribal court proceedings and acts of all tribal legislatures. [s. 806.245, Stats.]
- 1994. Recognition of tribal registration of boats, snowmobiles, and ATVs. [s. 23.35, Stats.]
- 1994. On-reservation arrest powers of tribal police officers. [s. 165.92, Stats.]
- 1994. Off-reservation emergency arrest powers of tribal police officers. [s. 175.40, Stats.]
- 1996. Enforcement of tribal protection orders and injunctions. [ss. 806.247 and 813.128, Stats.]
- 2007. GLIFWC wardens: general provisions. [Numerous statutes.]
- 2007. GLIFWC wardens: emergency arrest powers. [s. 175.41, Stats.]
- 2010. Mutual assistance between tribal and state, county, or municipal law enforcement agencies. [s. 66.0313, Stats.]



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

J.B. VAN HOLLEN
ATTORNEY GENERAL

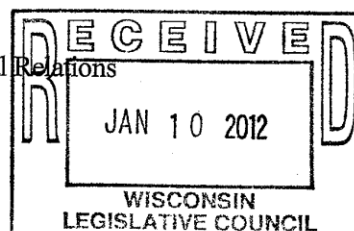
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January 6, 2012

The Honorable Scott Walker, Governor
Members of the Wisconsin State Legislature
Members of the Legislative Council Committee on State-Tribal Relations
State Capitol
Madison, Wisconsin 53702



Dear Governor Walker and Members:

Section 165.90 of the Wisconsin Statutes requires the Department of Justice to report on the performance of cooperative county-tribal law enforcement programs receiving aid under this section. This letter constitutes our report.

This marks the twenty-fourth year that the Department has awarded grants for cooperative county-tribal law enforcement programs. The statutes require counties and tribes to develop **joint** program plans. The Department requires plans to include resolutions of support for the plan adopted by county boards and tribal governing bodies, to signify cooperation and mutual commitment.

This program pays for a variety of law enforcement services to Native American communities across Wisconsin. Grants have been used for the costs of personnel, patrol, investigation, crime prevention, K-9 units, information technology, law enforcement training, alternatives to drug abuse and gang involvement, diversity training, cultural awareness education, and emergency/rescue equipment. An increasing number of grants are awarded to programs that include tribal police departments, generally helping to pay for tribal liaison personnel and patrol services provided to Native American reservations and communities.

The amount appropriated for this program in State Fiscal Year 2012, after lapses, was \$528,220. Grant funds come from tribal gaming receipts as appropriated in the biennial budget. For Calendar Year 2012, the Department issued 19 awards totaling \$528,220. These awards were in the following amounts:

The Honorable Scott Walker, Governor
Members of the Wisconsin State Legislature
Members of the Legislative Council Committee on State-Tribal Relations
January 6, 2012

<u>COUNTY</u>	<u>TRIBE</u>	<u>CY2012 AWARD</u>
Ashland	Bad River Chippewa	\$41,674
Barron	St. Croix Chippewa	\$11,682
Bayfield	Red Cliff Chippewa	\$41,285
Brown	Oneida Nation	\$30,496
Burnett	St. Croix Chippewa	\$12,332
Forest	Potawatomi	\$29,007
Forest	Sokaogon Chippewa	\$25,106
Jackson	Ho Chunk Nation	\$23,116
Juneau	Ho Chunk Nation	\$25,741
Menominee	Menominee	\$57,504
Monroe	Ho Chunk Nation	\$18,824
Outagamie	Oneida Nation	\$26,834
Polk	St. Croix Chippewa	\$13,138
Sauk	Ho Chunk Nation	\$21,914
Sawyer	Lac Courte Oreilles Chippewa	\$48,960
Shawano	Ho Chunk Nation	\$13,746
Shawano	Stockbridge-Munsee Mohican	\$30,625
Vilas	Lac du Flambeau Chippewa	\$41,158
Wood	Ho Chunk Nation	<u>\$15,078</u>
TOTAL		\$528,220

The Department of Justice's County-Tribal Law Enforcement Grant Program continues to help local law enforcement provide needed services in Native American communities. In addition, this program helps build a cooperative atmosphere and positive relationship between law enforcement and tribal governments and communities. I am pleased to share information regarding this important program with you.

Sincerely,



J.B. Van Hollen
Attorney General

JBVH:kjk