

1993 Assembly Bill 1198

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1993 WISCONSIN ACT 407

AN ACT to amend 165.827, 165.83 (2) (b), (h), (i), (j), (n) and (p), 165.84 (1), (2), (3), (5) and (6), 165.85 (1), 165.85 (3) (a) to (d), 165.85 (4) (a), (b) 1, (bn) 1 (intro.), (c) and (e) and 175.40 (1) (c); and to create 165.83 (1) (d) to (g), 165.85 (2) (e), 165.85 (4) (f) and 165.92 of the statutes, **relating to:** tribal law enforcement officers.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

PREFATORY NOTE: This bill was recommended by the joint legislative council's American Indian study committee. The bill contains several provisions relating to the performance of law enforcement activities by tribal law enforcement officers.

First, in SECTIONS 10 and 11, the bill provides that a tribal law enforcement officer who meets specified requirements shall have the same powers and duties to enforce state laws and to make arrests for violations of those laws that sheriffs have. Under current law, tribal law enforcement officers may enforce tribal laws, including criminal laws, as well as tribal ordinances against Indian persons, but may not enforce state laws against Indian and non-Indian persons, unless they are deputized to do so by a county sheriff.

The enforcement and arrest powers granted to tribal officers under this bill generally may be exercised only on reservation or trust lands of the tribe which employs the officer. However, a tribal officer may pursue a fleeing offender out of the officer's jurisdictional area and may also transport an arrested offender to a county jail or other detention facility located off of the reservation.

The requirements that a tribal law enforcement officer must meet in order to exercise these powers include: 1) successfully completing law enforcement training and annual recertification training currently required of other law enforcement officers; and 2) meeting the employment qualifications established by the law enforcement standards board (LESB) by rule. These are the same requirements that other law enforcement officers in the state must meet. In addition, the tribal law enforcement officer must accept the various duties of law enforcement officers established by the statutes.

The bill provides that, generally, tribes are liable for the acts of their law enforcement officers while acting within the scope of their employment and the state and its political subdivisions are not. The bill further provides that no tribal officer

may exercise the powers granted in the bill unless the governing body of the tribe employing the officer adopts a resolution specifically stating that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in state court of its liability or another resolution that the department of justice (DOJ) determines will reasonably allow enforcement of the tribe's liability for actions of its officers.

The bill provides that the language authorizing tribal law enforcement officers to exercise the previously described powers does not limit the current authority of a county sheriff, under s. 59.21 (5), to deputize (referred to in the statutes as "depute") a tribal law enforcement officer to perform law enforcement activities and make arrests outside of the reservation or tribal trust lands — in other words, in a broader geographical area than that permitted by the statutory grant of police powers in the bill. The bill also provides that if a sheriff deputizes a tribal law enforcement officer and, in so doing, grants less authority to the officer than is granted by the bill, that act of deputization will not reduce the authority granted by the bill.

Second, in SECTIONS 1 to 4, the bill creates a definition of "tribal law enforcement agency" for purposes of the statutes governing the state criminal identification system (known as the "TIME" system) and permits a tribal law enforcement agency and its officers to have the same access to the TIME system that other law enforcement agencies and officers have, if the tribe that created the agency agrees that the agency will perform the duties currently placed on other law enforcement agencies in ss. 165.83 and 165.84. The bill authorizes DOJ to impose on tribal law enforcement agencies the fees it charges other law enforcement agencies for the use of the TIME system.

Third, in SECTIONS 5 to 9, the bill creates a definition of "tribal law enforcement officer" for purposes of certification as a law enforcement officer by the LESB and provides that tribal law enforcement officers who meet the requirements for certification and agree to accept the duties of law enforcement officers set forth in various state statutes may become certified

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as law enforcement officers and may exercise the law enforcement and arrest powers granted to state-certified tribal law enforcement officers in SECTIONS 10 and 11 of the bill.

SECTION 1. 165.827 of the statutes is amended to read:

165.827 Transaction information for management of enforcement system; fees. The department of justice may impose fees on law enforcement agencies and tribal law enforcement agencies, as defined in s. 165.83 (1) (e). for rentals, use of terminals and related costs and services associated with the transaction information for management of enforcement system. All moneys collected under this section shall be deposited in s. 20.455 (2) (h).

SECTION 2. 165.83 (1) (d) to (g) of the statutes are created to read:

165.83 (1) (d) “Reservation lands” has the meaning given in s. 165.92 (1) (a).

(e) “Tribal law enforcement agency” means an agency of a tribe that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe’s laws or ordinances, that employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a) and that was created by a tribe that agrees that its law enforcement agency will perform the duties required of the agency under this section and s. 165.84.

(f) “Tribe” has the meaning given in s. 165.92 (1) (c).

(g) “Trust lands” has the meaning given in s. 165.92 (1) (d).

NOTE: Defines “tribal law enforcement agency” and related words for purposes of the statutes governing the state criminal identification system.

The statutes governing that system create a number of duties of law enforcement agencies, primarily regarding the collection and sharing of identifying information regarding persons taken into custody by the agencies and their officers. Due to the tribes’ sovereignty, the state cannot unilaterally impose these duties on Indian tribes. The definition is limited to tribal agencies created by tribes that agree that their agencies will perform these duties. In so limiting the definition, the bill establishes a tribal agency’s performance of the duties as the *quid pro quo* for inclusion in the state’s criminal identification system.

SECTION 3. 165.83 (2) (b), (h), (i), (j), (n) and (p) of the statutes are amended to read:

165.83 (2) (b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement or tribal law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(h) Cooperate with and assist all law enforcement and tribal law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local and tribal law enforcement agencies in

establishing efficient local and tribal bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement and tribal law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement and tribal law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(n) Make available upon request, to all local and state and tribal law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the law enforcement files of the department which will aid these agencies in the performance of their official duties. For this purpose the department shall operate on a 24-hour a day basis, 7 days a week. The information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state, tribal law enforcement agencies and the national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

NOTE: Inserts references to “tribal law enforcement agencies” into statutes establishing the duties of DOJ regarding criminal identification.

SECTION 4. 165.84 (1), (2), (3), (5) and (6) of the statutes are amended to read:

165.84 (1) All persons in charge of law enforcement and tribal law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the department. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83 (2) (a) may be taken at the discretion of the law enforcement or tribal law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

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(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the department within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement or tribal law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the department so requests.

(3) All persons in charge of law enforcement and tribal law enforcement agencies shall forward to the department copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83 (2) (e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement or tribal law enforcement agency concerned must immediately notify the department of the service or withdrawal. In any case, the law enforcement or tribal law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the department all arrest warrants of this type which continue to be outstanding.

(5) All persons in charge of law enforcement and tribal law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation and parole offices, shall supply the department with the information described in s. 165.83 (2) (f) on the basis of the forms and instructions to be supplied by the department under s. 165.83 (2) (g).

(6) All persons in charge of law enforcement and tribal law enforcement agencies in this state shall furnish the department with any other identifying data required in accordance with guidelines established by the department. All law enforcement and tribal law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the department copies of such items in these files as will aid in establishing the nucleus of the state criminal identification file.

NOTE: Inserts references to "tribal law enforcement agencies" into statutes establishing duties of law enforcement agencies regarding cooperation in criminal identification.

SECTION 5. 165.85 (1) of the statutes is amended to read:

165.85 (1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of state-wide concern, and that law enforcement work is of vital importance to the health, safety and welfare of the people of this state and is of such a nature as to require training, education and the establishment of standards of a proper professional character. The public interest requires that

these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement or jail officers, persons who are serving as these officers in a temporary or probationary capacity and persons already in regular service.

NOTE: Inserts reference to tribal law enforcement officers into the statute stating state policy regarding the need for law enforcement training standards.

SECTION 6. 165.85 (2) (e) of the statutes is created to read:

165.85 (2) (e) "Tribal law enforcement officer" means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances, who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances and who agrees to accept the duties of law enforcement officers under the laws of this state.

NOTE: Defines "tribal law enforcement officer" for purposes of certification by the LESB. This definition is based in part on s. 165.92 (1) (b), which is created in SECTION 10 of the bill.

The statutes create many duties of law enforcement officers, such as the duty to report suspected cases of child abuse or neglect and the duty to arrest and take into custody a person whom the officer has probable cause to believe violated a domestic abuse, child abuse or harassment restraining order or injunction issued against the person. Due to the tribes' sovereignty, the state cannot unilaterally impose these duties on officers employed by Indian tribes. The definition is limited to those officers who agree to accept these duties. In so limiting the definition, the bill establishes an officer's acceptance of the duties as the *quid pro quo* for state certification and for exercise of the law enforcement and arrest powers granted to state-certified tribal law enforcement officers by s. 165.92, created in SECTION 10 of the bill.

SECTION 7. 165.85 (3) (a) to (d) of the statutes are amended to read:

165.85 (3) (a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement and tribal law enforcement agencies in this state.

(b) Establish minimum educational and training standards for admission to employment as a law enforcement or tribal law enforcement officer: 1) in permanent positions, and 2) in temporary, probationary or part-time status. Educational and training standards for tribal law enforcement officers under this paragraph shall be identical to standards for other law enforcement officers.

(c) Certify persons as being qualified under this section to be law enforcement, tribal law enforcement or jail officers. Prior to being certified under this paragraph, a tribal law enforcement officer shall agree to accept the duties of law enforcement officers under the laws of this state.

(cm) Decertify law enforcement, tribal law enforcement or jail officers who terminate employment or are

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terminated or who violate or fail to comply with a rule or order of the board relating to curriculum or training. The board shall establish procedures for decertification in compliance with ch. 227.

(d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs, in schools operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits or jail officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from traditional subjects such as first aid, patrolling, statutory authority, techniques of arrest and firearms to subjects designed to provide a better understanding of ever-increasing complex problems in law enforcement such as human relations, civil rights, constitutional law and supervision, control and maintenance of a jail. The board shall appoint a 13-member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee shall advise the board in the establishment of the curriculum requirements.

SECTION 8. 165.85 (4) (a), (b) 1., (bn) 1 (intro.), (c) and (e) of the statutes are amended to read:

165.85 (4) (a) The following law enforcement and tribal law enforcement officers are not required to meet any requirement of pars. (b) 1. and (c) as a condition of tenure or continued employment. The failure of any such law enforcement or tribal law enforcement officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those law enforcement and tribal law enforcement officers may voluntarily participate in this program.

1. Law enforcement and tribal law enforcement officers serving under permanent appointment prior to January 1, 1974.

2. Law enforcement and tribal law enforcement officers who are elected by popular vote.

(b) 1. No person may be appointed as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement or tribal law enforcement officer. The program shall include 400 hours of training, except the program for law enforcement officers who serve as rangers for the department of natural resources includes 240 hours of training. The board shall promulgate a rule

under ch. 227 providing a specific curriculum for a 400-hour conventional program and a 240-hour ranger program. The rule shall ensure that there is an adequate amount of training for each program to enable the person to deal effectively with domestic abuse incidents. The training under this subdivision shall include training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.06 (11) and information on mental health and developmental disabilities agencies and other resources that may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making emergency detentions and emergency protective placements and locating appropriate facilities for the emergency detentions and emergency protective placements of persons. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement or tribal law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part-time law enforcement and tribal law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 3 years. For purposes of this section, a part-time law enforcement or tribal law enforcement officer is a law enforcement or tribal law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employe of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board are acceptable as meeting these training requirements.

(bn) 1. (intro.) No person other than an officer elected by popular vote may continue as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless that person completes annual recertification training. Any officer elected by popular vote who is also a certified officer must complete annual recertification training to maintain certification. Any officer who is subject to this subdivision shall complete at least 24 hours each fiscal year beginning in the later of the following:

(c) In addition to the requirements of pars. (b) and (bn), the board may, by rule, fix such other minimum qualifications for the employment of law enforcement, tribal law enforcement or jail officers as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement or jail officers, and the board shall prescribe

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the means for presenting evidence of fulfillment of these requirements.

(e) This section does not preclude any law enforcement or tribal law enforcement agency or sheriff from setting recruit training and employment standards which are higher than the minimum standards set by the board.

NOTE: Inserts references to "tribal law enforcement officers" into statutes regarding the training and certification of law enforcement officers, requires that training standards for tribal law enforcement officers be identical to those for other officers and requires that, prior to being certified, tribal law enforcement officers agree to accept the duties of law enforcement officers under the laws of this state.

SECTION 9. 165.85 (4) (f) of the statutes is created to read:

165.85 (4) (f) In addition to certification procedures under pars. (a) to (d), the board may certify any person as being a tribal law enforcement officer on the basis of the person's completion of the training requirements for law enforcement officer certification prior to the effective date of this paragraph [revisor inserts date]. The officer must also meet the agreement requirements under sub. (3) (c) prior to certification as a tribal law enforcement officer.

NOTE: Provides that a tribal law enforcement officer who, prior to enactment of the bill, meets state training requirements but has not been certified, does not have to repeat the training to become certified as a tribal law enforcement officer.

SECTION 10. 165.92 of the statutes is created to read:

165.92 Tribal law enforcement officers; powers and duties. (1) **DEFINITIONS.** In this section:

(a) "Reservation lands" means all lands within the exterior boundaries of an Indian reservation in this state.

(b) "Tribal law enforcement officer" means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances and who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances.

(c) "Tribe" means a federally recognized Indian tribe or band in this state.

(d) "Trust lands" means any lands in this state held in trust by the United States government for the benefit of a tribe or a member of a tribe.

(2) **POWERS AND DUTIES.** (a) A tribal law enforcement officer who meets the requirements of s. 165.85 (4) (b) 1., (bn) 1 and (c) shall have the same powers to enforce the laws of the state and to make arrests for violations of such laws that sheriffs have, including powers granted to sheriffs under ss. 59.23 and 59.24 and under the common law, and shall perform the duties accepted under s. 165.85 (3) (c).

(b) Except as provided in par. (c) and s. 175.40, the powers and duties described under par. (a) may be exer-

cised or performed by a tribal law enforcement officer only on the reservation of the tribe or on trust lands held for the tribe or for a member of the tribe that employs the officer.

(c) Any tribal law enforcement officer making an arrest under the authority of this subsection may transport the arrested person to the jail or other detention facility of the county in which the arrest took place or to another jail or detention facility agreed upon by the tribe and the county in which the arrest took place.

(3) **LIABILITY.** (a) Unless otherwise provided in a joint program plan under s. 165.90 (2) or an agreement between a political subdivision of this state and a tribe, the tribe that employs a tribal law enforcement officer is liable for all acts of the officer while acting within the scope of his or her employment and neither the state nor any political subdivision of the state may be held liable for any action of the officer taken under the authority of sub. (2) (a).

(b) 1. No tribal law enforcement officer may exercise or perform the powers or duties described under sub. (2) (a) unless the governing body of the tribe that employs the officer adopts and has in effect a resolution under this paragraph. Except as provided in subd. 2, a resolution under this paragraph shall include a statement that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability under par. (a).

2. A resolution that does not include the statement required in subd. 1 shall meet the requirements of this paragraph if the department of justice determines that the resolution will reasonably allow the enforcement in the courts of this state of the tribe's liability under par. (a).

(4) **DEPUTIZATION BY SHERIFF.** Nothing in this section limits the authority of a county sheriff to depute a tribal law enforcement officer under s. 59.21 (5), including the authority to grant law enforcement and arrest powers outside the territory described in sub. (2) (b). Deputization of a tribal law enforcement officer by a sheriff shall not limit the powers and duties granted to the officer by sub. (2).

SECTION 11. 175.40 (1) (c) of the statutes is amended to read:

175.40 (1) (c) "Peace officer" has the meaning specified in s. 939.22 (22), but also includes any tribal law enforcement officer who is empowered to act under s. 165.92 (2) (a).

NOTE: Authorizes a tribal law enforcement officer who meets the previously described requirements to engage in fresh pursuit, that is, to pursue and arrest a fleeing offender who leaves the officer's jurisdictional area, and to make arrests on the entire width of any highway that forms the boundary of the officer's jurisdictional area.