



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: David L. Lovell, Senior Analyst

RE: LRB-3581/1, Draft Legislation Relating to Mutual Assistance Between Tribal and State, County, or Municipal Law Enforcement Agencies

DATE: December 21, 2009

This Memo describes the provisions of LRB-3581/1, draft legislation relating to mutual assistance between tribal and state, county, or municipal (non-tribal) law enforcement agencies.

Current Law

In general, law enforcement officers' powers are limited to the jurisdiction of the agency that employs them. A number of statutes give officers the authority to act outside of their employing agency's territorial jurisdiction under specified circumstances. One of these statutes is referred to as the mutual assistance statute. [s. 66.0313, Stats.]

The mutual assistance statute provides that the personnel of one law enforcement agency may respond to the request for assistance from another law enforcement agency. The requesting agency is ultimately responsible for all costs incurred by the responding agency in providing the requested assistance. It specifies that, when providing such assistance, a law enforcement officer is treated as:

1. An employee of his or her regular employing agency for purposes of wage and disability payments, pension and worker's compensation claims, damage to equipment and clothing, and medical expense arising from such service outside his or her territorial jurisdiction, although the agency requesting assistance must reimburse the employing agency for these costs.
2. An employee of the requesting agency for purposes of legal expenses and judgments arising from the officer's official actions while providing the requested assistance.

Attorney General's Opinion

On October 1, 2008, Attorney General J.B. Van Hollen issued a formal opinion asserting that the mutual assistance statute does not apply to tribal law enforcement agencies. [OAG 8-08.] This Memo will not summarize the opinion in its entirety, but will briefly state the conclusions to the two key questions.

Are tribal law enforcement agencies included within the coverage of s. 66.0313?

The opinion concludes that tribal law enforcement agencies are *not* included within the coverage of s. 66.0313. It reaches this conclusion based on an analysis of definitions of terms used in this and related statutes, the legislative history of those statutes, and pertinent federal case law.

If tribal law enforcement agencies are not included within the coverage of s. 66.0313, are there other means for county and tribal law enforcement agencies to engage in mutual assistance?

The opinion concludes that there are a number of means other than s. 66.0313 for county and tribal law enforcement agencies to engage in mutual assistance. It identifies as such means agreements under s. 66.0301, *Intergovernmental cooperation*, and joint program plans under s. 165.90, *County-tribal law enforcement programs*, but notes that an agreement is limited to the extent that the officers involved already have law enforcement authority in the circumstances contemplated by the agreement.

LRB-3581/1

LRB-3581/1 (the draft) adds tribal law enforcement agencies to the definition of “law enforcement agency” in the mutual assistance statute. Thus, except as otherwise provided, the statute applies equally to tribal, as well as non-tribal law enforcement agencies.

The draft treats the matters of costs and liability in cases of assistance between a tribal agency and a non-tribal agency in the same manner that current law treats those matters. That is to say, when a tribal agency responds to a request from a non-tribal agency, the non-tribal agency is responsible for the costs associated with the response and is liable for the actions of the responding officer. In general, when a non-tribal agency responds to a request for assistance from a tribal agency, the tribal agency is responsible for the costs. An important exception to this is the case in which the response takes place within the jurisdiction of the responding agency. If a tribal agency requests assistance from the sheriff of the county in which the tribe’s reservation is located, the sheriff’s response is more an exercise of his or her constitutional duty to provide law enforcement services in the county than a response under the mutual assistance statute, and so the sheriff remains responsible for the costs of the response unless there is an agreement between the sheriff and the tribe that specifies otherwise.¹

To ensure that a tribe is responsible for the costs when it requests assistance from a non-tribal law enforcement agency, the draft only allows a non-tribal agency to respond to a request for assistance

¹ It would appear likely that a large proportion of responses by sheriff’s departments to requests for assistance from tribal agencies will fall under this exception.

from a tribal agency *at a location outside the non-tribal agency's jurisdiction* if one of the following conditions is met:

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 Department of Justice (DOJ) determines has the same effect.
2. The tribe or tribal agency maintains liability insurance that does all of the following:
 - a. Covers the tribal agency for these costs.
 - b. Has a limit of coverage of not less than \$2 million for any occurrence.
 - c. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the tribe, up to the limits of the policy.
3. The tribal and non-tribal agencies have an agreement in place in which the non-tribal agency agrees to accept responsibility for these costs.

The draft specifies that these conditions do not have the effect of authorizing a non-tribal agency to respond to a request for assistance from a tribal agency at a location outside its jurisdiction unless the tribal agency has provided to the DOJ a copy of the resolution, insurance policy, or agreement and the DOJ has posted the document on the Internet site it maintains for exchanging information with law enforcement agencies.²

² Note that these conditions are similar to those that must be met in order for a tribal law enforcement officer to enforce state law on the employing tribe's reservation under current s. 165.92, Stats.