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Law Enforcement on Tribal Lands

Tribal law enforcement is an issue of continuing interest to many policymakers because Native Americans are statistically more likely than members of other races and ethnicities to be victims of violence and tribal law enforcement agencies (LEAs) have historically had fewer resources relative to non-tribal agencies. This In Focus provides an overview of tribal law enforcement, federal funding for tribal LEAs, their authority to enforce federal and state laws, and training for tribal law enforcement officers (LEOs).

Types of Tribal Law Enforcement Agencies

Tribally operated LEAs are the most common type of LEA on tribal lands. The Bureau of Justice Statistics (BJS) reported that of the 258 of tribal LEAs on tribal lands in 2018, 234 (91%) were tribally operated. These agencies employed a total of 3,834 LEOs. Many tribal LEAs are relatively small; 82% employ fewer than 25 officers. The majority of tribal LEAs (203) are general service agencies, meaning that they respond to calls for service, conduct investigations, and conduct traffic enforcement. The remaining LEAs are mostly conservation and wildlife protection agencies (30), though there is one tribal university LEA.

Public Law 83-280

Public Law 83-280, commonly known as *P.L. 280*, transferred federal criminal jurisdiction over tribal reservation lands, with a few exceptions (see 18 U.S.C. § 1162), to six states: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin (known as *mandatory P.L. 280 states*). The law also permitted other states to assume full or partial state criminal jurisdiction. Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington (known as *optional P.L. 280 states*) have adopted full or partial criminal jurisdiction over tribal reservation lands. In 1968, Congress amended the law to require tribal consent before states could assume additional jurisdiction (see P.L. 90-284), and no tribes have provided consent since.

Most tribes that operate their own LEAs in non-P.L. 280 states do so under the auspices of the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638). That act allows tribes to establish their own government functions by contracting or compacting with the Bureau of Indian Affairs (BIA) and several other federal agencies to administer certain federal programs. Sworn and nonsworn staff of these LEAs are tribal employees. Tribes can operate their LEAs under a *638 contract*, which

establishes the LEA's organizational structure, recommends performance standards, and provides federal funding for the agency. Tribes can also operate their LEAs under a *638 compact*, which gives them more control over the LEA's operations because BIA funds compacts through a block grant, whereas under a 638 contract BIA pays for budgeted line items.

Tribes in P.L. 280 states can operate their own LEA to enforce tribal law on reservations, but they must fund the agency with tribal revenue and/or grant funds. In general, tribes in P.L. 280 states do not receive 638 funds from BIA. In many cases, sheriff's departments provide law enforcement services on tribal lands in P.L. 280 states.

BJS reported that 23 LEAs on tribal lands (9%) are directly operated by BIA's Office of Justice Services (OJS). Officers of these agencies are federal employees and they are a part of a national, BIA-operated law enforcement organization. BIA OJS shares jurisdiction with the Federal Bureau of Investigation (FBI) to investigate offenses under the General Crimes Act (18 U.S.C. § 1152) and the Major Crimes Act (18 U.S.C. § 1153). BIA LEOs can enforce tribal laws with the tribe's permission. BIA employs both patrol officers and investigators to provide law enforcement services on reservations where they provide direct services.

Funding for Tribal Law Enforcement Agencies

Many tribes use 638 contract and compact funding from BIA to operate their LEAs. BIA allocates public safety and justice (PS&J) funding to tribes based on historical funding levels for these programs. Prior to 1999, tribes received funding from BIA for law enforcement and corrections as a Tribal Priority Allocation (TPA). Tribes were allowed to allocate and reallocate funds for any TPA function to reflect the tribe's priorities. BIA, at the direction of Congress, ended the TPA designation for law enforcement and corrections funding in 1999 in order to ensure that BIA funding for law enforcement and corrections was used for that purpose. Base law enforcement and corrections funding for tribes is based on what the tribe allocated for law enforcement and corrections in 1999. Additional PS&J funding provided since 1999 is allocated among tribes based on a series of factors including violent crime rates, staffing levels, service population, and calls for service.

BIA funding may not cover all LEA operating costs, so tribes supplement 638 funds with tribal funds, state and federal grants, and other sources (see **Table 1**). The Department of Justice (DOJ) allows tribes to apply for most tribe-specific grants through its Coordinated Tribal Assistance Solicitation (CTAS). Tribes can receive funding for public safety and community policing, among other

purposes, through CTAS. In addition to CTAS, tribal governments are eligible to apply for grants from other DOJ grant programs, such as the Community Oriented Policing Services' hiring program, the Bulletproof Vest Partnership program, and the Body-Worn Camera Partnership program. Tribal LEAs compete with non-tribal LEAs for these funds. Tribes are also eligible to receive an allocation under the Edward Byrne Memorial Justice Assistance Grant program if they report violent crime data to the FBI, which serves as the basis for calculating funding allocations to non-state governments.

Table 1. Tribal LEA Funding Sources, 2018

Source of Funding	Proportion of LEAs
Tribal Council/Government	84.0%
P.L. 93-638 Contract (BIA)	61.4%
Other Federal Grants	48.4%
DOJ CTAS	45.1%
P.L. 93-638 Self-Governance Compact (BIA)	29.7%
State Grants	24.8%
Tribal Business Enterprise (e.g., gaming)	23.2%
Other State Funding	5.8%
Private Funding	2.8%

Source: Bureau of Justice Statistics, Census of Tribal Law Enforcement Agencies, 2018

Notes: Percentages do not total 100% because LEAs identified multiple sources of funding.

Training for Tribal Law Enforcement Officers

The Department of the Interior is required to establish training and education standards for BIA LEOs (25 U.S.C. §2802(e)(1)(A)). These standards are required to be consistent with the Federal Law Enforcement Training Accreditation Commission's standards for similar LEOs (25 U.S.C. §2802(e)(1)(B)). LEO recruits can satisfy the standards by completing an accredited state, local, or tribal training academy or program (25 U.S.C. §2802(e)(1)(C)).

Federal regulations also require LEOs of any program funded by BIA to successfully complete a basic law enforcement training course prescribed by the director of BIA before performing law enforcement functions (25 C.F.R. §12.35). Per the regulation, additional mandatory supplemental and in-service training courses are to be prescribed by the director.

Tribal LEOs can receive basic training at the U.S. Indian Police Academy (IPA) in Artesia, NM, though they can also receive basic training from state and local law enforcement training academies. The IPA provides continuing education opportunities, with courses on crime scene investigation, evidence collection, missing persons investigations, and drug enforcement. The IPA also offers an Indian Country Criminal Investigator Training Program to strengthen training for FBI, BIA, and tribal special

agents assigned to Indian Country. In addition, the Advanced Training Center at Camp Grafton, ND, delivers specialized advanced training in criminal investigation, drug enforcement, and command school programs.

Authority to Enforce Federal and State Laws

Tribal LEOs are unable to enforce federal and state laws on reservations absent a specific grant of authority. This limits their ability to conduct investigations of non-Indians and arrest non-Indians who commit crimes on tribal lands.

Special Law Enforcement Commissions

Tribal LEOs can be granted a Special Law Enforcement Commission (SLEC) by BIA. SLEC grants an officer the authority to make arrests for violations of federal criminal statutes and enforce federal fishing and wildlife regulations on tribal lands. Full-time certified LEOs employed by a tribal LEA that has a deputization agreement with BIA are eligible for an SLEC. LEOs must complete an SLEC application, verify completion of the Indian Police Academy and/or state Police Officer Standards and Training academy, and pass an initial background check and subsequent background checks every five years. BIA can revoke deputization agreements and individual commissions if they are misused or fail to meet federal requirements.

Authority to Enforce State Laws

Some states (e.g., Arizona, Minnesota, Oklahoma, Oregon, Washington) have enacted statutes that grant tribal LEOs authority to enforce state laws if they meet certain standards (e.g., training and liability requirements). State laws granting this authority tend to limit tribal LEOs' authority to enforce state laws to crimes that occur on tribal lands. BJS reported that 70% of tribal LEAs are authorized by states to enforce state laws.

Tribal LEAs can also negotiate cross-deputization agreements with a state or local LEAs, usually a sheriff's department, authorizing tribal LEOs to enforce certain state laws on tribal lands. California, Michigan, New Mexico, and North Dakota only recognize tribal LEOs' authority to enforce state laws if they are cross-deputized by another LEA. BJS reported that 32% of tribal LEAs have a deputization agreement with a local LEA and 19% have a deputization agreement with a state LEA. These agreements may provide a broad grant of authority (e.g., general law enforcement powers) or cover a narrow issue (e.g., the authority to enforce fish and wildlife laws). Negotiating agreements may be challenging due to concerns about tribal sovereignty, cultural differences, training requirements, officer liability, or a history of mistrust between the parties. In addition, a new sheriff might decide to void an agreement reached with a past sheriff, or choose to renegotiate the scope of the agreement. Tribes might also face negotiation of agreements with several sheriffs' departments if their reservations share borders with multiple counties.

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