

Approved

Date: *February 1, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:38 a.m. on January 31, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Research
Gordon Self, Revisor
Mary Blair, Secretary

Conferees appearing before the committee:

Senator Wagle
Senator Lyons
Senator Gilstrap
Senator Adkins
Senator Oleen
Kyle Smith, KBI
Terry Heidner, Kansas Department of Transportation (KDOT)
Julie Hein, Hein and Weir, Chartered
Chief James Batesse, Prairie Band Potawatomi Tribal Police (PBPTP)
Chief Greg Chuckluck, Kickapoo Tribal Police
Officer Terry Scott, PBPTP
Natalie Haag, Chief Counsel, Office of the Governor
Representative Becky Hutchins
Sheriff Daina Durham, Jackson County

Others attending: see attached list

The following bills were requested for introduction and approved by Committee:

<u>Senator</u>	<u>Subject</u>	<u>Motion</u>	<u>Second</u>
Sen. Wagle	Allow licensed clinical professional counselors to own a corporation	Sen. Donovan	Sen. Umbarger
Sen. Lyons	Divorce reform legislation where dependent children are involved	Sen. Oleen	Sen. Umbarger
Sen. Gilstrap	U.S. Dept of State-Office of Foreign Missions (F.M.) requests legis. to insure adherence to U.S. traffic laws and regs by F.M. community	Sen. Goodwin	Sen. Donovan
Sen. Adkins	Estate reform bill re: inheritants	Sen. Goodwin	Sen. Gilstrap
	Re: Consumer protection bill; tele-marketers must adhere to national "no call" list	Sen. Schmidt	Sen. Umbarger
Sen. Oleen	Refine the Juvenile Detention Facilities fund	Sen. Goodwin	Sen. Adkins

Conferee Smith requested introduction of a bill which would make a minor clarification in the statute that controls how methamphetamine labs are cleaned up. He elaborated on the need for this bill. (attachment 1) Senator Oleen moved to introduce the bill, Senator O'Connor seconded. Carried.

Conferee Heidner requested introduction of a bill concerning repeat DUI offenders and the associated requirements that utilize ignition interlok. He elaborated on the purpose of the bill. (no attachment) Senator Goodwin moved to introduce the bill, Senator Donovan seconded. Carried.

SB 74—concerning certain law enforcement officers of the state and certain political subdivisions thereof; concerning Native American Indian tribal law enforcement officers

Conferee Hein testified in support of **SB 74**, a bill which provides for deputization of tribal law enforcement officers under certain circumstances. She presented a history of the bill, detailed it's purpose, and acknowledged it's benefit for improving the relationship between the Indian Tribes in Kansas and other units of Kansas government. (attachment 2) During discussion there was agreement to have an amendment drafted to clarify the language in the bill regarding who can request assistance by the tribal police.

Conferee Battese testified in support of **SB 74**. He presented background on his police department including the training his officers must complete before being certified. He discussed the Tribal-State Gaming Compact (particularly Section 15 which addresses the issue of cross-deputization), tribal police cross-deputization on a federal level, and he stated that the PBPTP has 13 full time officers to help state law enforcement. (attachment 3)

Conferee Chuckluck testified in support of **SB 74**. He presented background on the Kickapoo Tribe Police Department including his qualifications as chief of police. He stated he felt the bill was good for law enforcement and would enhance public safety. (attachment 4)

Conferee Scott testified in support of **SB 74**. He presented background on the PBPTP, discussed in detail, the training of it's personnel, and testified regarding several instances where tribal and state police have worked together on several occasions. He stated that this bill would give the tribes the statutory authority to do what is already being done. (attachment 5)

Conferee Haag appeared before Committee to provide some "insight" on several issues surrounding **SB 74**. She identified and detailed three issue to consider: how passing this bill affects other agencies; training; and liability. (no attachment)

Conferee Representative Hutchins testified in opposition to **SB 74**. She discussed why she felt this legislation was unnecessary, reminded Committee that there were on going discussions with the U.S. AG's Office, PBP officials and Jackson County officials that she felt should proceed without state intervention, and expressed concern about liability and the risk this would place on the county, city or state. (attachment 6)

Conferee Durham testified in opposition to **SB 74**. She discussed why she felt this bill infringes on the responsibility of the Sheriff, presents a liability for the people of the county and state while there is immunity from liability for the tribal officer, why the bill may cause conflict with existing statutes and why the bill is unnecessary. She also discussed the monetary effects this bill may pass on to counties with limited resources. (attachment 7)

Written testimony neither supporting nor opposing **SB 74** was submitted by the Office of the Attorney General. (attachment 8) and written testimony opposing **SB 74** was submitted by Sheriff Lamar Shoemaker, Brown County Sheriff's Department. (attachment 9)

The meeting adjourned at 10:34 a.m. The next meeting is February 1, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: January 31, 2001

NAME	REPRESENTING
Verna Weber	Social & Rehabilitation Serv.
Gail Bright	A.G.
JODI SPINDLER	Native American Affairs
Jeff Bottenberg	Kansas Sher. & Asso. & Hon.
Danna Durham	Sheriff, Jackson County
Berky Hutchins	50 th Dist State Rep
Greg Churchill	Kickapoo Tribe
Terry Heidner	KDOT
Rosalie Thornburgh	KDOT
Nancy Bogina	KDOT
James Battese	Potawatomie Tribal Police
Terry J. Scott	Potawatomie TRIBAL Police
Kyle Smith	KBT
Staci Ham	Tribal Nations in Kansas
TRACY DIEL	SGA/KRGC
Natalie Haag	Governor's office



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Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Bill Request
Before the Senate Judiciary Committee
Kyle G. Smith
Kansas Bureau of Investigation
January 31, 2001

Chairman Vratil and members of the Committee,

I am pleased to appear today on behalf of the KBI and KDHE to request a minor clarification in the statute that controls how we pay for methamphetamine lab clean up. The KBI and KDHE have an excellent working partnership in protecting the public from the health risks posed by what are essentially illegal, volatile, chemical waste sites.

KDHE has proven itself to be both efficient and cost effective in cleaning up such illegal lab sites. Particularly in the case of a small 'box' lab, it is a lot easier, and a more efficient use of man-hours, for the KBI or local law enforcement to use KDHE. While there is a DEA funded contractor, who is very good as well, particularly with large, 'bubbling' labs, law enforcement sometimes has to sit on a small site, waiting hours for a lab response team to come from the DEA contractor in Oklahoma.

K.S.A. 65-7012 has a provision that sets up a separate fund within KDHE to collect and pay funds for clandestine laboratory cleanup. The problem is in subparagraph (f) of the statute which states "Moneys from the fund shall not supplant any other local, state or federal funds". KDHE feels prohibited from spending any moneys from that fund until all other sources, such as the DEA contract, are depleted. In short, sometimes we can do things quicker, cheaper and just as well on a local level. However, the language in the statute prohibits that action. That is why we are requesting that subparagraph (f) be struck as an unnecessary restriction on KDHE that is costing law enforcement badly needed resources.

Thank you for your consideration. I would be happy to answer any questions.

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K.S.A. 65-7012. Chemical control fund; revenues; expenditures. (a) There is established a fund in the treasury entitled the chemical control fund.

(b) Revenues from the following sources shall be deposited in the state treasury and credited to the fund: (1) moneys received by the secretary in the form of grants, gifts, bequests, reimbursements, or appropriations from any source intended to be used for the purposes of the fund;

(2) interest attributable to the investment of moneys in the fund; and

(3) moneys collected under K.S.A. 1999 Supp. 65-7010 and 65-7011 and amendments thereto.

(c) Moneys in the chemical control fund can only be expended directly or through contracts for the costs of: (1) Administration and enforcement of the provisions of this act;

(2) contracting for services needed to supplement the department's staff in alleged illegal drug manufacturing site clean ups;

(3) consultation needed concerning alleged illegal drug manufacturing site clean ups;

(4) activities to address immediate or emergency threats to human health or the environment related to alleged illegal drug manufacturing sites; and

(5) development of educational materials and programs for informing the regulated community and the public about illegal drug manufacturing issues.

(d) On or before the 10th of each month following the month in which moneys are deposited into the chemical control fund, and thereafter on or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the chemical control fund interest earnings based upon: (1) The average daily balance of moneys in the chemical control fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

~~(f) Moneys from the fund shall not supplant any other local, state or federal funds.~~

History: L. 1999, ch. 170, § 18; July 1.

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HEIN AND WEIR, CHARTERED

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**Testimony re: SB 74
Senate Judiciary Committee
Presented by Julie J. Hein
on behalf of
Indian Nations In Kansas
January 31, 2001**

Mr. Chairman, Members of the Committee:

My name is Julie Hein, and I represent the Indian Nations in Kansas (INIK). INIK is an ad hoc coalition of three of the four Kansas Native American Indian Tribes, the Kickapoo Tribe in Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri.

INIK supports SB 74, which provides for deputization of tribal law enforcement officers under certain circumstances. This issue was reviewed and discussed by the Joint Committee on State-Tribal Relations in the 1999 interim and that committee introduced SB 543 in the 2000 Session.

SB 543 was heard in Senate Federal and State Affairs Committee last year, was amended and passed out of committee unanimously, and passed out of the Senate 40-0. SB 74 is exactly like SB 543 as it passed out of the Senate last year.

The bill relates to an issue known as cross deputization. SB 74 allows local units of government to authorize law enforcement personnel for the Native American Indian Tribes to act as agents to investigate, arrest, and otherwise execute law enforcement powers with regards to state and local statutes and ordinances.

Currently, deputization of tribal law enforcement personnel does occur, but on a highly spotty basis and with no specific authority set out in the Kansas Statutes.

SB 74 would specifically authorize tribal law enforcement officers to act with full powers and immunities when requested by the state and local units of government or their agents.

Speaking generally to the relationship between the State of Kansas and its political subdivisions in relation to the Native American Indian Tribes, it is our hope, goal, and intention, that the relationship between the respective governments can be improved at all levels. SB 74 would be one more step in an ongoing effort to improve relationships and

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to have better intergovernmental cooperation.

SB 74 is not perfect, and only grants deputization authority on a case by case basis and only when requested. To say the least, the bill is not drawn as broadly as we would desire. The law enforcement personnel at the Indian reservations are fully trained, and are required to pass the same law enforcement training as other law enforcement personnel in the state. They are competent, trained professionals.

But this bill is a step in the right direction to improving the relationship between the Indian Tribes in Kansas and other units of government in Kansas. We appreciate the Joint Committee on State-Tribal Relations introducing this bill, and we would respectfully request the committee approve SB 74 with the recommendation that it be passed.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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SENATE BILL 74
Testimony in favor of the bill
By
James Battese

Mr. Chairman, Committee Members, I am James Battese, Chief of Police, Prairie Band Potawatomi Tribal Police. I am pleased to once again testify on this legislation.

First let me tell you about my department. The Prairie Band Potawatomi Tribal Police department is made up of myself, (12) twelve trained full time officers, (5) five dispatchers, administrative staff, an animal control officer and (2) K-9s. We have a new police station near 162nd and Q Roads, just west of Mayetta. My officers go through the Kansas Law Enforcement Training Center and hold a Kansas Law Enforcement Certification.

The Tribal-State Gaming Compact's Section 5 (AG) reads: "Tribal Law Enforcement Agency" means the police force of the Tribe established and maintained by the Tribe pursuant to the Tribe's powers of self-government to carry out law enforcement. Members of the Tribal Law Enforcement Agency shall attend the Kansas Law Enforcement Training Center, the Highway Patrol Training Center or receive comparable training approved by the State Gaming Agency or the federal government.

The Tribal-State Gaming Compact's Section 15 reads: To the extent permitted by law, the Tribe and the State agree to enter into such cross-deputization agreements as may be necessary and proper to facilitate cooperation between tribal and state law enforcement personnel.

To comply with Section 5 (AG) the Potawatomi Nation established and maintains a police force. The tribal police officers attend KLETC, Topeka Police Department Academy or Kansas Highway Patrol Training. The State of Kansas has amended KSA 74-5605 allowing tribal officers of tribes with a gaming compact to attend KLETC. This Allows tribal police officers to meet the same standards as other law enforcement officers in Kansas.

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To comply with Section 15 is why we are here today. The apparent oversight of granting tribal police officers law enforcement status or lack of means for any Kansas State Agency to enter into a cross-deputization agreement now needs to be addressed. This bill partially addresses the issues and is a good first step.

Potawatomi Tribal Police Officers attend federal training furnished by the Bureau of Indian Affairs. The Tribal Officers are then cross-deputized by the United States Department of Interior, Bureau of Indian Affairs to enforcement federal law.

Finally, The Potawatomi Tribal Police Department is offering thirteen (13) full time officers to help state law enforcement. In the days of tight budgets and too few officers, this can only be very real benefit to all.

At this time, I will address any questions you may have.

Mr. Chairman, Committee Members thank you very much for you kind attention.

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KICKAPOO TRIBAL POLICE DEPARTMENT
824 K 20 HWY
HORTON, KANSAS 66439
PH: 785-486-3665 FAX: 785-486-3779
Greg Chuckluck, Chief of Police

Testimony before Senate Judiciary Committee
Re: SB 74
Presented by Greg Chuckluck
on behalf of
Kickapoo Tribe of Kansas
January 31, 2001

Mr. Chairman, Members of the Committee:

My name is Chief Chuckluck. I am the Chief of Police for the Kickapoo Tribe in Kansas, one of the four (4) federally recognized Indian Tribes located in Northeast Kansas.

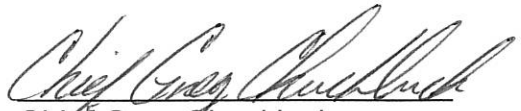
The Kickapoo Tribe in Kansas supports passage of Senate bill 74 concerning Tribal Police providing emergency assistance to the State's Police agencies. This bill is good for law enforcement and will enhance public safety.

The Kickapoo Police Department is staffed by certified law enforcement officers and operates on a 24-7-365 schedule. We have at least two officers on duty around the clock and a dispatcher present twenty-four hours a day.

Every officer is trained and certified the same as any other law enforcement officer in the State of Kansas.

I have over fourteen (14) years of experience as a law enforcement officer. When I served on Tribal Police Departments in the State of Oklahoma, the State of Oklahoma had a similar provision allowing emergency utilization of Tribal Police officers to assist city, county and state law enforcement officers, and it benefitted not only the law enforcement officers but also the public safety.

The Kickapoo Tribe in Kansas thanks you for having this opportunity to present our support for Senate Bill 74.


Chief Greg Chuckluck
Kickapoo Tribal Police Department
Kickapoo Tribe in Kansas

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PRAIRIE BAND POTAWATOMI POLICE DEPARTMENT

June 13, 2000

We would like to express our appreciation for the opportunity to appear again in support of this proposal. We'd like to give you a brief history of the Tribal Police for the Prairie Band Potawatomi Nation.

The tribal police department is slightly over three years old and came into being as a result of several factors, principally, the opening of Harrah's Casino. In the gaming compact with the State of Kansas, the Tribe is **required** to maintain a police department. Certain stipulations are made, including educational requirements for tribal police officers. These requirements mandate that tribal police officers meet the same training requisites that every other law enforcement officer in Kansas must meet.

Our officers have been trained at K.L.E.T.C. in Hutchinson, Topeka PD police academy and the Kansas Highway Patrol Training center in Salina. Clearly, tribal police basic training is on par with any law enforcement agency in Kansas.

Kansas statutes mandate forty hours of annual training for Kansas law enforcement officers and tribal officers comply even though there is no requirement that we do so. Our position on training is simply that competent training equips officers to better serve the citizens we've sworn to protect.

We would next like to discuss the experience of the Tribal Police Department. Beginning with the Chief of Police, James Battese, who began his career in law enforcement with the Jackson County Sheriff's department. Mr. Battese served as under sheriff to Sheriff Don Collins, leaving that position to accept employment with the Santa Fe Railroad as a criminal investigator for the Railroad Police. In that capacity, he was commissioned as a law enforcement officer with statewide authority in Kansas, Oklahoma, Texas and Colorado. In his position as a railroad special agent, he found it necessary to work harmoniously with state, local and federal law enforcement agencies. Mr. Battese retired from that position to become Chief of Police for the Tribal Police Department. His experience in law enforcement exceeds thirty years.

Officer Terry Scott came to the Tribal police after having retired from the Kansas Highway Patrol. Officer Scott served as a Trooper in Topeka, a Sergeant in Garden City and Chanute, a Lieutenant in Topeka, Troop Commander of Division One in Topeka, Captain in charge of the Research and Planning Unit of the KHP and as Lieutenant Colonel, serving as Assistant Superintendent under Colonel Lonnie McCollum. Prior to service with the K.H.P., he had served as a police officer for the City of Wellington. His experience in law enforcement exceeds thirty-two years.

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Patrol Supervisor Samuel Grant retired from the Kansas Highway Patrol at the rank of Lieutenant after serving for twenty-seven years for the State. Sam served as a trooper at Lacrosse and Garden City. He was promoted to sergeant and was a field supervisor in Division One in Topeka. He was then promoted and served in Research and Planning at General Headquarters, acted as Legislative Security for four years and oversaw the Criminal Interdiction Unit at the time of his retirement.

Officer Verle Creek had served for over five years as a communications operator with the Kansas Highway Patrol. He brought expertise which proved invaluable in setting up a law enforcement communications center and training dispatchers to handle those duties. His experience has been utilized in setting up and maintaining the communications section of the tribal police. (Note: The tribal police communications center was rated in the top 10% in the state in operational protocol, adherence to NCIC policies and procedures and overall accountability by Kansas Highway Patrol Sergeant in Charge of NCIC, Larry Warders.)

The remaining officers employed by the Tribal police are young officers, some with prior experience, others with none, but each of whom has successfully completed basic law enforcement training as required. These officers were chosen for their willingness to learn and their desire to become professional law enforcement officers.

This information illustrates clearly that, although the Tribal Police Department is a young agency, those responsible for its administration are not neophytes. The Tribal Police Department has become a mix of older officers with a great deal of experience and younger officers who need such maturity to guide them in their career development. They are individually and collectively dedicated to leading the agency into the future through training and competent leadership to achieve proficiency and professionalism on a level with any law enforcement agency in Kansas.

One of the difficulties experienced by the tribal police is the lack of officers, with experience, who will be with the department for many years to come.. Officers with 7-15 years experience are simply not available for an agency just beginning and those who are, frankly, are not generally acceptable. Capable officers have been promoted, have a home and family and have an investment in the retirement system of the department that they are presently employed by. If they're good, they're taken! It would be helpful to the longevity of tribal officers if they were recognized as the capable, competent law enforcement officers that they are.

Following are some of the agencies with whom we've worked cooperatively in the past and will undoubtedly do so in the future:

United States Secret Service: Tribal officers assisted SS agents in developing information that resulted in prosecution and conviction of an individual for impersonating a federal officer and recently in a counterfeiting case which resulted in several arrests from counterfeiting to sale and distribution of narcotics.

Federal Alcohol, Tobacco and Firearms: This agency was assisted in an investigation by Tribal Police involving illegal firearms, manufacturing silencers and possible sale of military weapons. This investigation resulted in a federal parole violation being filed against the suspect.

Federal Bureau of Investigation: We are currently working with the FBI investigating a burglary in which Indian artifacts were stolen and possibly sold out of state.

Kansas Bureau of Investigation: KBI Agents were requested to assist Tribal officers with a "Meth Lab" which had been discovered by Tribal officers on the

reservation. Special Agent Supervisor, Currie Myers, Agent Patti Bottorff and Chemist Kamala Hinnergardt responded and with assistance from Tribal officers processed the crime scene. This resulted in the arrest of two persons for manufacturing illegal drugs. Cooperation between the agencies was exemplary.

Topeka Police Department; Topeka PD has afforded Tribal officers an opportunity to attend their basic training academy, which we have accepted in instances in which we would have a longer wait for KLETC to begin a class. Additionally, Tribal officers have worked with Topeka PD officers to investigate crimes which were discovered on the reservation, but were initiated or carried out within the City of Topeka. Tribal officers have also served warrants issued by the City of Topeka and taken the suspects into custody until Topeka officers could transport them to a correctional facility.

United States Marshal's Fugitive Task Force; Tribal police were notified by Officer Beth Mechler that they were seeking a person believed to be on the reservation for parole violation. This information was provided at approximately 2:00 P.M. At 10:30 P.M. on the same date, the wanted person was taken into custody and delivered to Officer Mechler. Tribal officers have, on several occasions, been requested to be on the look out for offenders who are targeted by the Task Force and have assisted Task Force officers in building searches for wanted suspects.

Shawnee County Sheriff: Tribal officers have on several occasions served arrest warrants and delivered suspects to Shawnee County Deputies. Just recently, information obtained by tribal police permitted the S.O. to obtain a search warrant. Tribal officers assisted with the execution of the warrant and seized narcotics from one of the more notorious drug user/dealers in Northern Shawnee County. Our proximity to Shawnee County lends itself to criminals moving freely back and forth. Detectives from the Sheriff's office and the Tribal police detective work closely in those areas affecting both jurisdictions.

Major Case Squad: This multi-jurisdictional body is comprised of officers from city and sheriff's departments in the area surrounding Shawnee County. As the name implies, the M-Squad can be called upon by a participating jurisdiction to assist with any major crime. Tribal officers have been accepted as members of the M-Squad and participate in their training sessions.

Kansas Highway Patrol: Tribal officers have on numerous occasions assisted State Troopers in performing their duties from assisting at accident scenes to providing "back up" for the trooper on automobile stops. The K.H.P. provided training for the Tribal canine and Officer Creek, his handler.

Kansas Fire Marshal's Office: Tribal officers aided The Fire Marshal's agent in his investigation of a residence which sustained an explosion caused by a broken propane line.

Kansas Parks and Wildlife: Area supervisor Rob Ladner and the Tribal conservation officer have been clarifying and negotiating the needs of each agency regarding enforcement of Kansas statutes and Tribal code which govern hunting on the reservation. It is the intent of both agencies to develop an understanding which would achieve the ultimate goal of effectively managing mutual natural resources to become a reality. Both agencies accept that we must work together to accomplish this goal.

Other Criminal Justice Agencies: The Tribal police have in the past and will continue in the future to work cooperatively with courts, prosecutors, social service agencies, corrections and any others, to assure that the rights and safety of citizens, including those accused of a crime, are protected to the best of our ability

Jackson County Sheriff: Officers of the Tribal police work continuously with this agency. Everything from court ordered civil process, arresting and holding perpetrators, providing cover officers for service of search warrant's in which the suspects were known to be armed and other areas in which they've requested our assistance. While there is animosity between these two agencies, the officers of the Tribal police have never allowed that animosity to compromise in any manner, their professional responsibilities as law enforcement officers, nor have they permitted those areas to jeopardize the safety of citizens insofar as present authority will permit.

Lastly and most importantly, we would point out the present operating procedure, Tribal police do have authority to halt persons who "breach the peace on the reservation" and to deliver such person to the Jackson County Sheriff or the Kansas Highway Patrol. This scenario has occurred more than 100 times during 2000. The deputy or the trooper is called away from whatever activity he was involved in, makes the arrest of the suspect(s) transports him/her to the county jail and becomes the arresting officer of record. In actuality, the Tribal officer will prepare an arrest report and any other documentation needed for court presentation and will be the one to testify in court concerning the events which led up to the arrest of the individual. The deputy or trooper then, becomes merely a prisoner transport officer. They follow the exact same procedure that the Tribal officer would follow, given full police authority, but must spend three to five hours of his/her time writing a report, going through booking procedures, etc. Some of these reports the Tribal officer has already done, the remainder, which he could do, given authority. It is estimated that Jackson County has devoted between 300 and 500 man-hours to this activity each calendar year and this figure most certainly will go up in the future. Tribal police will become more effective in their efforts to discourage drinking and driving and other criminal activities on the reservation.

It should be pointed out that tribal police are not obligated to follow this procedure regarding those who violated Kansas Law. Tribal police could simply take those persons to the reservation boundary and evict them. In addition to these on-reservation incidents, tribal police have been requested on many occasions to respond to off-reservation incidents wherein a deputy or trooper was not available or needed assistance.

These requests have varied in nature including, to name a few: An intrusion alarm at an animal clinic in Hoyt that had been burglarized on at least three occasions; A hit and run accident in Mayetta; Providing a back up officer for a Jackson County Deputy in which four persons were arrested in a stolen car; Assisting troopers on US 75 highway investigating accidents; Providing cover officers for Jackson County while they were executing a search warrant and many others. As law enforcement officers, we cannot in good conscience refuse to respond to a call for assistance from another law enforcement agency adjacent to the reservation even though in responding, we are placed in a tenuous position by not having been officially recognized as a law enforcement officer by Kansas Statute.

We have officers working 24 hours a day and can respond to an incident immediately adjacent to the reservation faster than the primary agency in most cases, if that agency should choose to request that we do so. Situations involving domestic abuse, child abuse, fights, disorderly conduct, automobile accidents and others in which there is an immediate danger to the safety of citizens on or off of the reservation would clearly be better served.

The Prairie Band Potawatomi Tribal Police Department has, at present, eleven certified law enforcement officers who combine a great deal of experience with the

vitality of youth. Tribal police are as well trained and formally educated as any other Law Enforcement officer in Kansas. To continue to make this resource unavailable in times of need to other law enforcement agencies is not in the best interest of those agencies who would choose to utilize that assistance or to the citizens of Kansas.

You may hear erroneous testimony that this issue is covered in K.S.A. 22-2407 which states: *(1) A law enforcement officer making an arrest (emphasis mine) may command the assistance of any person who may be in the vicinity.*

Plainly, by the language, this statute is very narrow in scope and covers only requests by the officer who is actively engaged in making an arrest, for assistance. It's clear that the intent of this statute is to permit an officer having physical difficulty in effecting an arrest to secure immediate assistance from passersby or whomever might be available. The sheriff states that this legislation is not needed, that she currently has authority to "deputize" on an "as needed", case by case basis. While this may be true, simply calling an officer on the radio and requesting his/her assistance does not constitute "deputizing" that officer. Since these requests come, not from the sheriff, but from her dispatcher and her officers, is she then delegating her authority to "deputize" to those employees?

By passing SB74, the legislature is not infringing upon the authority of any elected official since there must be a **request** from another agency for the provisions of this bill to have any application. There is no conflict with any other statutes, for SB74 requires overt action on the part of the requesting agency.

In the past the sheriff's department calls for our assistance when it suits her purpose without regard to the legality of what she's requesting or the position she's placing tribal police officers in. It perhaps should be made clear that we respond, not because we're required to, but because we are professional police officers, dedicated to law enforcement.

This bill will give other agencies an avenue to utilize, lawfully, the resources offered by the tribal police. We have spoken to Jefferson County Sheriff Roy Dunaway, president of the Kansas Sheriff's Association, Shawnee County Sheriff Richard Barta, Nemaha County Sheriff David Mee, Topeka Police Chief Dean Forester and numerous other law enforcement executives in northern Kansas. Each has indicated that they would use the resources offered by the tribal police, given authorization to do so. Each has also expressed their appreciation for the cooperation that's been given in the past and we believe are comfortable in their relationship with this department.

Should the legislature choose not to approve this bill, we will reluctantly and sadly abide by that decision. We will discontinue to go beyond the boundaries of the Prairie Band Potawatomi Reservation to assist other agencies unless the request clearly falls within the exception permitted by K.S.A. 22-2407. In the past, we have been responding to requests of the sheriff off of the reservation, not as law enforcement officers, but as armed citizens. We cannot continue to ask our officers to do so. We realize that the consequences of that decision may be extreme, the very lives of citizens and law enforcement officers may be at risk. We sincerely hope that no such incidents occur, but we cannot continue to function in the manner we have in the past. There must be clear authorization to proceed. The current situation simply invites a lawsuit should an incident occur. We are no longer willing to accept that probability unless this body authorizes our actions.

In summary, we are asking this committee to recognize what is best for law enforcement and the citizens of Kansas by approving Senate Bill 74. While this bill does not address the issue of cross-deputization we feel it important to note that the Nation Sheriff's Association has in their Resolution 2000-09 supports "development and

implementation of Cross Deputation' with tribal police. We will continue to work, as we have in the past within the reservation boundaries and fulfill our obligation to the Prairie Band Potawatomi Nation. We are charged with maintaining the peace within those boundaries. We are authorized to do so by Treaty with the United States of America and will continue to remain in compliance with court decisions and statutory requirements of the United States irrespective of the sheriff's opinion concerning what our authority is or is not.

A handwritten signature in black ink, appearing to read "Terry J. Scott". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Terry J. Scott
Prairie Band Potawatomi Tribal Police Department

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BECKY HUTCHINS
REPRESENTATIVE, FIFTIETH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY
SENATE JUDICIARY COMMITTEE
JANUARY 31, 2001
SB74

Mr. Chairman and Members of the Senate Judiciary Committee:

Thank you for the opportunity to come before you today to speak in opposition to SB74. I will keep my remarks brief.

1. First, I believe this legislation is unnecessary. Under current law, a law enforcement officer making an arrest may command the assistance of any person who may be in the vicinity. K.S.A. 22-2407 I feel the language in HB2111 is a duplication and therefore redundant.
2. Second, there are ongoing discussions with the U.S. Attorney's Office, the Prairie Band Potawatomi officials, and Jackson County officials regarding law enforcement issues. I feel we should let these discussions proceed without intervention from the state.
3. Third, I feel there is still the issue of liability. When considering the "deepest pocket" mentality, and tribal immunity, my concern is that the county, state or city will put themselves (i.e. the taxpayers) at greater risk.

Representative Becky Hutchins
50th District State Representative

35 Jud
1-31-01
att 6

3 Jvd
1-31-01
att 7

Jackson County Sheriff's Office



210 US 75 Hwy.
Holton, Kansas
Phone (785) 364-2251
Fax (785) 364-4820

Daina D Durham, Sheriff
Milton R. Gillespie, Undersheriff

January 30, 2001

Chairman John Vratil and Committee Members:

My name is Daina D. Durham, I am the Sheriff of Jackson County. Jackson County is one of the counties that have a Native American reservation within its jurisdictional boundaries. The Prairie Band Potawatomi Nation's Reservation lies within the 658 square miles of Jackson County.

I believe it is important to view proposed House Bill 2111/Senate Bill 74 in light of the current Federal and State statutes that control this area of the law.

There are three basic jurisdictions, Federal, State or Tribal, who may have criminal jurisdiction over crimes committed in "Indian Country". Jurisdiction is generally determining by a three-part test; "situs" or location of the incident, parties involved, and finally the federal and state laws for the particular state. The general rule is that Federal and Tribal jurisdiction preempts State jurisdiction on all Indian Country. (*Indian County Crimes Act, 18 U.S.C. 1152; and Major Crimes Act, 18 U.S.C. 1153 & 1885*) When an Indian commits a crime against another Indian, in Indian Country, the Tribal Court has exclusive Jurisdiction, unless the person committed one of the offences covered by the Major Crimes Act or other federal statutes, whereby concurrent jurisdiction would exist between the Tribal Court and the U.S. District Court. States retain sole jurisdiction over non-Indian persons who commit a crime against a non-Indian, even if committed in Indian Country. *U.S. v. McBratney*, 104 U.S. 621, (1882). Tribal courts have no criminal jurisdiction over non-Indians for crimes committed in Indian Country. *Oliphant v. Suquamish Indian Tribe*, et al, 98 S.Ct. 1011, (1978).

The above stated general rules are true unless abrogated by an explicit act of Congress. Kansas is one of the states where Congress has exercised its plenary power and transferred authority to the State of Kansas granting total jurisdiction over all crimes committed in its state, to include crimes involving Indians on Indian Country. (*Kansas Act, 18 U.S.C. 3243*) Therefore, the location and status of the persons involved are no longer determinative as to jurisdiction. Congress' enactment of the Kansas Act preempts the Major Crimes Act and conferred criminal jurisdiction over the entire state on the state in general and the sheriff in particular. *Negonsott v. Samuels*, 507 U.S. 99 (1993).

Sn Jvd
1-31-01
att 7

Kansas Statute Annotated 19-813 sets out the general duties and responsibilities of the Sheriff.

‘It shall be the duty of the sheriff and undersheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their and such person or persons of their county as they deem necessary.’

K.S.A. 22-2202(11) defines ‘law enforcement officer’ in part for purposes of the Kansas Criminal Code as:

‘[A]ny person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody over persons accused or convicted of crime....’

K.S.A. 22-2401 requires a law enforcement officer to arrest an individual when he has probable cause to believe that the person is committing or has committed a felony. Thus, a police officer, as a law enforcement officer, has a duty to arrest a person for committing a felony.

K.S.A. 22-2401a (as amended by L. 1982, ch. 380, § 2) establishes the jurisdiction of both sheriffs and city law enforcement officers thus:

‘(1) Law Enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise their powers as law enforcement officers anywhere within their county and also may exercise such powers in any other county when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city. Such officers also may exercise such powers in any other place when in fresh pursuit of a person.

(3) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (1) or (2), law enforcement officers may exercise their powers as law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which such assistance is requested. (Emphasis added.)

Reading these statutes together, it is apparent that the sheriff and the city police have concurrent jurisdiction and duties within the city limits and on city-owned property outside the city limits. But, as has been held by previous letters and opinions of the

Attorney General's Office, it has been concluded that the sheriff has the primary responsibility for apprehending and investigating crimes throughout the county.

No Kansas cases delineate the respective duties of the sheriff and police officers. However, the Missouri Supreme Court, in considering the duties of a sheriff, provides guidance in *State v. Williams*, 144 SW 2d 98 (1940), as follows:

'His authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinances the city and towns have their police departments or their own marshals. ...Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law.A policeman is an officer whose duties have been, for local convenience, carved out of the old duties of constables, and the constables were always part of the general force at the disposal of the sheriff. There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace possessing such power as the statutes authorize. ... The courts have taken cognizance of the development of local enforcement agencies.

Since there would appear to be few, if any, substantive differences in the duties of sheriffs and city police in Missouri and Kansas, the Attorney General opined the foregoing principles have application in Kansas. Therefore, in light of these principles and the statutory provisions previously cited above, the sheriff and a city police officer have concurrent jurisdiction to enforce state laws within such city but that the Sheriff's jurisdiction is ultimately superior and countywide. The principle is historically and logically based in the desire to afford the people of the county to vote to determine whom best advances their law enforcement needs.

The problem arises when the issue of jurisdiction and status of tribal police officers occurs. As previously states, K.S.A. 22-2202(11) defines 'law enforcement officer' in part for purposes of the Kansas Criminal Code as:

'[A]ny person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody over persons accused or convicted of crime....

Attorney General Opinion No. 94-152 held that Unless deputized or otherwise employed by the county in which the reservation is located, or some other appropriate state law enforcement authority, tribal law enforcement officers are not authorized to enforce state laws within the boundaries of the reservation even upon receiving certification from the Kansas law enforcement training commission. However, under the tribe's sovereign authority, and in order to preserve the peace, tribal law enforcement officers may detain persons who have committed an unlawful breach of the peace within the boundaries of the reservation and transport such persons, as far as the reservation

border, to the proper authorities. What constitutes an “unlawful breach of the peace” will depend on the circumstances and the applicable law.

K.S.A. 22-2401 sets forth the circumstances under which a “law enforcement officer” may make an arrest in the state of Kansas. **Any person who is not a “law enforcement officer” as defined in K.S.A. 22-2201 is subject to the provisions of K.S.A. 22-2403 when making an arrest under the laws of this state.**

K.S.A. 19-813 is the state law that vests sheriffs, undersheriffs and sheriffs’ deputies with a duty to maintain public order. K.S.A. 12-4111 vests law enforcement officers employed by Kansas cities with the power to detain persons, to place them in custody and to arrest them for violations of municipal ordinances. Highway patrol officers are vested with authority pursuant to K.S.A. 74-2108, capitol area security officers pursuant to K.S.A. 1993 Supp. 75-4503 and university police officers are empowered by K.S.A. 76-726. The law enforcement powers of these various officers are further defined and limited by the jurisdictional boundaries established in K.S.A. 1993 Supp. 22-2401a. There are no state laws vesting similar authority in tribal law enforcement officers as such. Neither are we aware of any federal laws or treaty provisions that would give the tribe authority to enforce state laws. Therefore, tribal law enforcement officers are not law enforcement officers within the definition of the Kansas code of criminal procedure. Such officers would be subject to the provisions of K.S.A. 22-2403 and would be considered private persons when making arrests for violations of state laws unless they do so pursuant to a proper appointment by the sheriff of the county in which they are located. This is true regardless whether the tribal officers have received training at the state law enforcement training center and are certified by the law enforcement training commission. While these officers may very well be qualified to perform law enforcement functions, they have not been statutorily vested with authority to enforce state laws by virtue of employment with the state or one of its political subdivisions as listed above unless they are deputized or otherwise employed by the county sheriff or other appropriate law enforcement authority.

The issue is by what legal authority is the Prairie Band of Potawatomi Tribal Police exercising criminal jurisdiction over Indian and non-Indian alike and does House Bill 2111/Senate Bill 74 address a lapse in statute? More to the point, how does this effect the people of Jackson County, does this Senate Bill have an unintended consequence for current law and is it necessary at all?

The Jackson County Sheriff is by statute responsible for all law enforcement within Jackson County, K.S.A. 19-801 *et seq.* I, as elected Sheriff, am responsible to the people of Jackson County for the enforcement of all laws of the State of Kansas to the best of my ability and knowledge. I fear this law is the first step and infringes on the jurisdiction and purview of the Sheriff. The Sheriff accepts liability personally and for the people of his county for the actions of all officers and employees in the execution of their duties. As such, only the Sheriff can certify and attest to the fitness and training of said personnel. That is why I alone am tasked with the authority and duty of determining who is authorized to carry deputy cards. This duty cannot be delegated to any other

except for the case of K.S.A. 22-2407. I take that responsibility very seriously. That is why cross-deputization is only vested in the Sheriff and why it must remain there.

I accomplish this duty by hiring and ensuring I have the best possible persons to perform the vital task of deputy. I take this responsibility very serious and exercise it judiciously. By my lone act of deputizing an individual to enforce the laws of the State of Kansas within Jackson County, I am personally attesting to their education, training, professionalism, and character. Every action by my deputies is subject to scrutiny and ultimately a determination as to its necessity and correctness.

The simple truth is one of liability verses immunity from liability. Every one of my deputies knows my standards, receives the mandatory training, is paid by the taxpayers, and is held to that standard under possible penalty of termination. They also understand that they, through their actions, can place themselves, the sheriff, the Jackson County Sheriff's Office and, ultimately, the people of Jackson County monetarily liable for their actions. The same is not true of a tribal officer.

Indian tribes have sovereign immunity from civil liability. The Tribe, its officials acting within their official capacity, tribal agencies and in some jurisdictions tribal corporations are immune to civil suit. If a tribal officer violates a civil right of a citizen of Kansas, while operating within its tribal jurisdiction, there would be no redress by the wronged party. They could not sue the tribe for violation of their rights because they would not have civil jurisdiction due to the tribe's sovereign immunity. The tribe or the officer could not be touched. If the officer were operating as a representative of the Jackson County Sheriff's Office under this proposed Bill, the people of Jackson County alone would shoulder the burden of liability. If a violation of civil rights occurred, only the taxpayers of Jackson County would foot the costs.

If this Bill is passed, I as Sheriff, could still not in good faith open up the people of Jackson County to such liability until I could personally vouch for the education, training, professionalism and character of the officer, just the same as with my deputies. In addition, the tribe would be required to waive its immunity, as it was required to under the Indian Gaming Act. When I assumed the duties of Sheriff, I initiated talks with the Prairie Band of Potawatomi Tribe about these very concerns but no resolution has been reached as of this date. I fear that the leadership of the Tribe has decided that in lieu of addressing the statutory limitations in a constructive, good faith basis with the local governmental authority, the tribe is attempting to bypass local authority and take it to the Legislature. I would still be unwilling to "request" their assistance until the issue of agreed standards for training and waiver of their immunity has taken place. I do not want them to accept anything more then what my constituents and I accept every day, responsibility and liability, neither more nor no less.

Pursuant to statute and Kansas Attorney General Opinions, unless deputized or otherwise employed by the county in which the reservation is located, or some other appropriate state law enforcement authority, tribal law enforcement officers are not authorized to enforce state laws within the boundaries of the reservation even upon

receiving certification from the Kansas law enforcement training commission. I would like to point out that pursuant to the above-mentioned Kansas Statutes and Attorney General Opinions, I believe this Bill would have the unintended consequence of conflicting with the power to deputize limited to the elected Sheriff, would throw into question the current state of the law and would extend that power to the city and Highway Patrol officers within my county. The vast majority of city officers within Jackson County also carry deputy cards from me. As stated, not all, but most city officers are also full-time or part-time deputies.

The affect of this Bill is to give the city officer, making a traffic stop for violation of a city ordinance, who discovers a misdemeanor or felony, the unintended power to deputize a tribal officer he requests assistance from merely by operating within his deputy duties. If he were to request assistance from the tribal police, he has just placed the county in the position of being liable. The Highway Patrol Officer who requests assistance would potentially place the State of Kansas in the position of being liable for the actions of officers without knowing it. The State would now be in the same position of making the taxpayers of the State accept the liability for the wrong acts of the tribal officers while the tribe would legally escape all liability. I do not believe it is the intent of the legislation to increase State liability without being indemnified by the tribe just as they required under the Gaming Act. Gaming Act indemnity is narrowly focused and would not cover officer exercising law enforcement duties for the city, county or state.

Upon my assuming the responsibility of the Jackson County Sheriff Office, I attempted to initiate a communication with Chief Battese in the hopes of fostering a reasonable working relationship. I even went so far as to prepare a very reasonable proposed contract for mutual cooperation and cross-deputization of his officers. I did this not because I was mandated by any compact or agreement by the state, but because as the chief law enforcement officer within the county, I believe it is important to foster mutual relationships. An agreement has not been reached but Tribal leadership was informed as to the Sheriff's duties, they're very limited jurisdiction and, above all, their responsibility via Attorney General Opinions.

Finally, I believe the Bill is unnecessary. I intended action of the Bill is already covered within the statute in K.S.A. 22-02407. Assisting law enforcement officer. K.S.A. 22-2407 states:

- (1) A law enforcement officer making an arrest may command the assistance of any person who may be in the vicinity.
- (2) A person commanded to assist a law enforcement officer shall have the same authority to arrest as the officer who commands his assistance.
- (3) A person commanded to assist a law enforcement officer in making an arrest shall not be civilly or criminally liable for any reasonable conduct in aid of the officer or any acts expressly directed by the officer.

In conclusion, I believe the law infringes on the responsibility of the Sheriff, places the people of the County and State in the position of being liable for the actions of tribal officers while the officer and tribe are not liable, may cause conflict with existing statutes and ultimately is unnecessary due to K.S.A. 22-02407. I ask that the legislature look closely at possible monetary affects this act may pass on to counties with limited resources and get a clear determination as to its effects on existing statutes.

Thank you for your time and consideration.

Sincerely,

Daina D. Durham
Sheriff
Jackson County, KS



State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

January 30, 2001

MAIN PHONE: (785) 296-2215
FAX: 296-6296

The Honorable John L. Vratil
State Senator, 11th District
State Capitol, Room 120-S
Topeka, Kansas 66612

Re: Senate Bill No. 74

Dear Senator Vratil:

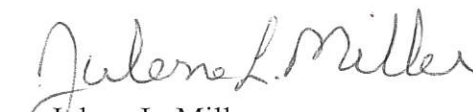
It is my understanding that 2001 Senate Bill No. 74 will be before the Senate Judiciary Committee on Wednesday, January 31. The Attorney General neither supports nor opposes this bill, but wanted to provide you with some information that may impact the Committee's position on it.

As you know, the Department of Interior recently published new regulations dealing with the Secretary's responsibility to make decisions regarding taking land into trust for Native American tribes. As currently written, one of the factors the Secretary will look at in determining whether to take into trust land that is outside a tribe's existing reservation is whether the tribe provides law enforcement services and has a cross-deputization agreement for this purpose. 25 C.F.R. § 151.12(f)(2) (copy enclosed). There is nothing to indicate that this factor will be determinative, but it is clearly a factor that will be considered and could lead the Secretary to approve an acquisition in trust that she otherwise might not approve.

It is our understanding that this regulation is subject to President Bush's moratorium and thus will not take effect for 60 days. During those 60 days, the administration could amend the regulation. Not knowing for sure whether an amendment will occur, we thought it wise to let you know of this possible ramification.

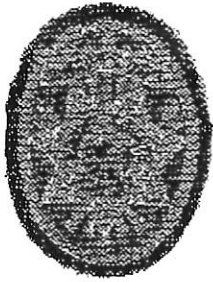
If you have any questions or concerns with regard to this matter, please feel free to contact me.

Very truly yours,


Julene L. Miller
Deputy Attorney General

JLM:jm

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1-31-01
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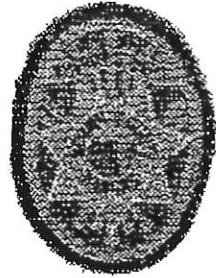
Brown County Sheriff's Dept.

706 UTAH HIAWATHA, KS 66434

PHONE (785)-742-7125

FAK (785)-742-3058

Lamar Shoemaker-Sheriff



TO THE HONORABLE MEMBERS OF THE HOUSE AND SENATE,

I AM WRITING THIS LETTER TO CLARIFY MY CONCERNS ON HOUSE BILL #2111. I FULLY UNDERSTAND THE TRIBAL POLICE HAVE ISSUES TO BE RESOLVED AT THE STATE LEVEL ON JURISDICTION AS I HAVE 3 RESERVATIONS WITHIN BROWN COUNTY.

FROM MY UNDERSTANDING, THE BILL BASICALLY ASKS FOR STATE AUTHORITY, WHEN REQUESTED, OFF THE RESERVATION. I HAVE RESEARCHED AND BELIEVE THE STATUTES ALREADY EXIST TO ANSWER THE PROBLEM.

THE FIRST ONE IS 22-2407 WHICH ALLOWS OFFICERS TO DEPUTIZE INDIVIDUALS TO ASSIST IN MAKING AN ARREST.

THE SECOND LAW IS 22-2401a SEC3, WHICH ALLOWS FOR LAW ENFORCEMENT OUTSIDE THEIR JURISDICTION TO ASSIST ANOTHER REQUESTING JURISDICTION.

I BELIEVE THE CREATION OF ANOTHER LAW WITH THESE ISSUES IS NOT NECESSARY UNLESS THERE IS A PROBLEM WITH THE EXISTING STATUTES. IF THERE IS A WORDING PROBLEM, I AM SURE IT WOULD BE EASIER TO CHANGE WORDS IN A STATUTE ALREADY TESTED THROUGH TIME VERSUS CREATION A STATUTE WHICH MAYBE DUPLICATIVE IN NATURE.

IF YOU HAVE ANY QUESTIONS, PLEASE CALL ME AS I AM ALSO LOOKING FOR THE ANSWERS WHICH PROVIDE CONTINUITY OF THE OPERATIONS OF LAW ENFORCEMENT. THANK YOU FOR YOUR TIME.

SHERIFF LAMAR SHOEMAKER

*Sr. Judd
1-31-01
att9*