

MINUTES

State-Tribal Relations



Senator Troy Heinert, Chair
Representative Shawn Bordeaux, Vice Chair

**First Meeting, 2016 Interim
Monday, May 16, 2016**

**Room 414 – State Capitol
Pierre, SD**

The first meeting of the State-Tribal Relations Committee was called to order by Senator Troy Heinert, Chair, at 10:00 a.m. (CDT) on May 16, 2016, in Room 414 of the State Capitol, Pierre, South Dakota.

A quorum was determined by the following members answering the roll call: Senator Troy Heinert, Chair; Representative Shawn Bordeaux, Vice Chair; Senators Jim Bradford, Betty Olson, and Craig Tieszen; Representatives Kevin Killer, Elizabeth May, and James Schaefer. Senator Ernie Otten and Representative Lee Qualm were excused.

Staff members present included Roxanne Hammond, Legislative Attorney; Stephanie Gruba, Fiscal Analyst; and Paul Giovanetti, Senior Legislative Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Opening Remarks

Senator Troy Heinert stated that the overall goal this interim is to focus on issues of public safety on the reservations and how the tribes and the state can work together to improve public safety.

Update from the Department of Tribal Relations

Mr. Steve Emery, Secretary, Department of Tribal Relations, discussed the overall goal of the department. The department's mission is to recognize the nine sovereign tribes as distinct political entities, to support their self-governance efforts, and to work with their chosen leaders in a cooperative government to government relationship in order to improve the quality of life for all South Dakota citizens. Additionally, the department can assist in identifying, developing and coordinating federal, state, and local resources to increase partnerships between state and tribal agencies. Finally, the department can introduce and/or support any legislation that would improve the quality of life for the Native American population in the state.

The department is available to partner with tribal governments by working with the tribes, and wants to keep all relationships open. South Dakota's Department of Public Safety is also willing to assist tribal governments. Assisting law enforcement on all reservations is of the utmost importance. A major challenge that the tribes are facing is getting access to training facilities. The training program that is in New Mexico is very militaristic and requires the cadets to be away from their families. The South Dakota Law Enforcement Training Academy will only allow tribal officers to attend if a vacancy occurs in a scheduled class. The state currently offers extradition agreements with other states and the department has been working to enable this process with the tribes. The state is also willing to assist in the

development or revisions to the Tribal Code. The reservation based parole program that has been a pilot program through the Department of Corrections has been a great success as parolees are able to stay on the reservation while serving parole. Currently this is available with the Sisseton-Wahpeton Sioux Tribe. The Department of Corrections has been working on expanding this to the Standing Rock Sioux Tribe and other tribes. Due to the success of the pilot program, both the Departments of Tribal Relations and Corrections feel that the program should be expanded across the state to all nine tribes.

Senator Craig Tieszen asked how many tribal officers have graduated from the academy in the last year. Secretary Emery stated that there have been between 3-5 graduates.

Representative Shawn Bordeaux asked if it is possible for the outlying communities to police themselves. Secretary Emery stated that if the tribal governments develop a memorandum of understanding, the tribe could have local authorities or tribal officers cross deputized in the outlying communities.

Senator Heinert asked for more detail on why tribal applicants to the South Dakota Law Enforcement Training Academy are only available when someone gives up a reserved seat in a class. Secretary Emery indicated that the administrative rules state that the slots are paid for by a fee that is assessed by tickets issued at the local level.

Senator Heinert asked what current public safety issues are affecting the tribes the most. Secretary Emery stated that all levels of law enforcement are fighting the methamphetamine problem throughout the state, including state, county, local, and tribal officials.

The committee expressed that the tribes need to reach out to state officials for assistance and use tribal sovereignty as a means to get resources and assistance that the state has available, and to utilize the state resources under the direction of the tribal government.

Discussion about Public Safety and Law Enforcement in the State, relating to the Tribes

Ms. Kirsten Jasper, Assistant Attorney General, Attorney General's Office, presented information on current initiatives that are being accomplished in the Attorney General's Office to promote public safety on the reservations. These programs include the Safe Trails Task Force, child abduction program, the usage of the state's forensics lab, access to the Sexual Offenders Registry, State Fusion Center, Connect South Dakota, and shared law enforcement agreements.

Representative Bordeaux stated that shared law enforcement agreements requires tribal members working with the state to address any issues with tribal sovereignty.

Senator Tieszen asked what is the current wait time for an officer to enter the South Dakota Law Enforcement Training Academy. Ms. Jasper replied that at this time she did not know.

Senator Tieszen stated that when the training academy became accredited the expectation was that the stereotypes would be broken down because state, county, city, and tribal officers would be training together. Additionally, this would allow for all officers to be working together with others and building relationships that would extend beyond the academy.

Representative Kevin Killer asked if a tribal member gets stopped off of the reservation, does their fine and fee fund the academy. Ms. Jasper replies that they are paying the fee, however it goes to the state, county, or local authorities not to the tribal government.

Senator Heinert asked if there are limitations at the training facility and what is the current funding source. Ms. Jasper replied that the funding comes from the fees collected but could not answer the details of the training academy limitations.

Senator Tieszen stated that either later this afternoon or at another meeting the committee should have someone from the training academy come and testify to the committee.

Mr. Trevor Jones, Secretary, Department of Public Safety, presented information on current initiatives that are being accomplished by the department working with tribal governments. The Office of Highway Safety is working with the Standing Rock Sioux Tribe conducting DUI Training and speed enforcement. The Office of Homeland Security is aiding tribes with warning sirens, radios, and ballistic vests. The Office of Emergency Management is working with the Cheyenne River Sioux Tribe in updating their mitigation plans, the Rosebud Sioux Tribe in building storm shelters, and the Standing Rock Sioux Tribe on a large road project. The Office of Highway Patrol, through the Crow Creek Sioux Tribe executing its sovereignty, has state police officers sworn in by a tribal judge to assist in the annual pow wow in August. They have also assisted in accidents, having the aviation unit assist in finding wanted and missing people, and aerial surveying after a major disaster. Lastly, the fusion center works with the tribe to assist in public safety communications.

Representative Killer thanked the Department of Public Safety for all of its support with the search for the three members that have gone missing and the manhunt on Rosebud. He asked what is the cost of using the aviation unit for the search. Secretary Jones replied that the cost to the tribe is nothing.

Senator Betty Olson asked if County Sheriffs have jurisdiction on the reservations. Ms. Jasper replied that the sheriff has no jurisdiction over a tribal member's criminal activities on the reservation, the state only has jurisdiction on crimes committed by non-tribal members on the reservation.

Representative Elizabeth May asked who has jurisdiction over the drug cartels that are operating on the reservations. Ms. Jasper replied that if the crime is committed by a tribal member the tribe has jurisdiction, if it is committed by a non-tribal member the state has jurisdiction, unless it is a part of the Major Crimes Act, then the Federal Government has jurisdiction.

Representative Bordeaux stated that jurisdiction on the reservation and on the trust lands has posed problems when it comes to the overall public safety on or around the reservations. Secretary Jones replied that a memorandum of understanding or a shared law enforcement agreement could outline the details of what state and tribal officials could do on tribal land and effectively work together for the betterment of public safety and the protection of law abiding citizens.

Senator Olson asked which tribes currently have a memorandum of understanding. Secretary Jones replied that currently there are no memorandums with any of the nine tribes in South Dakota. There is an

extradition agreement with the Sisseton-Wahpeton Sioux Tribe. Jurisdictional boundaries are an impediment to the practice of good public safety and criminals are aware of this. Drug criminals often know where the impediments geographically are located in our state and they target those areas for their criminal activity.

Note: Committee had a discussion at this time which for continuity purposes is with Public Testimony and Committee Discussion.

Mr. Bryan Gortmaker, Director, Division of Criminal Investigations, presented to the committee information regarding the Law Enforcement Training Fund (LETF). In 1977 the Law Enforcement Standard of Training Commission was created and the LETF was established. This fund is used solely for Law Enforcement and Judicial Training. When a criminal is convicted of any crime, a fee of forty dollars is assessed to the fine. Of that forty dollars, thirty dollars goes directly to the LETF, which has not increased since 2004. The LETF is used to run the Law Enforcement Training Facility and the State Forensic Laboratory in Pierre. The Law Enforcement Training Academy has a budget of \$1.7million. There are two types of courses that are offered at the Law Enforcement Training Academy: Basic Law Enforcement Certification Course and Advanced Training. Both of these courses are offered to tribal officers for free. There are three Basic Courses offered annually with each class averaging 48 students. Statute provides that if an individual is hired carrying state law enforcement credentials, the individual has one year to be certified as a Law Enforcement Officer. Agencies will plan six to nine months out and reserve the number of slots they need for the attrition within the force. As the population continues to increase throughout the state, jurisdictions are adding to their force to maintain an adequate officer-to-citizen ratio.

Mr. Scott Rechtenbaugh, Executive Secretary, Law Enforcement Training Academy, stated that larger agencies within the state plan their hiring cycles based on how many slots are available in the class. Smaller agencies tend to fill in the seats that are available and try to get the officers into the academy within six months of being hired.

Senator Jim Bradford asked about the details of the certification after a county sheriff is elected. Mr. Rechtenbaugh replied that for an individual to run for county sheriff they have to meet the minimum requirements to enter the academy, once elected the seat is reserved for the next class at no cost to the county.

Representative May asked about the details of the Basic Course and if there are any mandates that come from the federal government. Mr. Gortmaker replied that the standards are set by the Law Enforcement Standards and Training Commission. The curriculum is fine-tuned every five years by the commission. This is accomplished by surveying all law enforcement agencies, both state and federal, to determine what curriculum needs to be taught in the course so the officer can leave the academy and fulfill their duty as a basic law enforcement officer. In statute and administrative rule there are requirements to train on domestic violence and firearm qualifications; however, there are no federal mandates or federal funds.

Senator Tieszen asked for elaboration on the availability of classes to tribal officers and the certification process for the academy. Mr. Rechtenbaugh stated that administrative rules give priority to state, county, and local officers. If there are seats available, tribal officers can attend. The tribal officers will receive a state certification. Mr. Gortmaker stated that there is additional schooling that the officer will need to take through the Bureau of Indian Affairs. The South Dakota Law Enforcement Training Academy has hosted the additional class in the past in order to allow tribal officers to receive their federal credentials.

If this course is offered in the future, a tribal officer could have state and federal certification when they finish at the academy.

Senator Olson asked if county officials could take the additional federal course and be able to enforce laws on the reservations. Mr. Gortmaker stated that if the tribes would agree to allow state officials with the federal certification to enforce laws within tribal boundaries, then it could be possible with either a shared law enforcement agreement or memorandum of understanding; however, this would require coordination with the United States Attorney's Office.

Representative Killer asked about the attrition rate of the police force throughout the state. Mr. Rechtenbaugh stated that the current attrition rate of the police force in South Dakota is averaging ten percent annually.

Senator Heinert asked what is the average cost per candidate to attend the South Dakota Law Enforcement Training Academy. Mr. Rechtenbaugh replied that the average cost is \$4000 per candidate; the funding for this training is provided by the LETF. There are no state or federal funds used for this training.

Senator Heinert asked if more funding and available space would allow for a larger class size or year round training. Mr. Gortmaker replied that the current academy can handle the class, the issue is finding additional instructors to teach that course.

SENATOR TIESZEN MOVED, SECONDED BY REPRESENTATIVE BORDEAUX, THAT THE COMMITTEE SENDS A RESOLUTION ENCOURAGING THE LAW ENFORCEMENT OFFICERS STANDARDS AND TRAINING COMMISSION TO RESOLVE STAFFING ISSUES IN ORDER TO OFFER A MINIMUM OF TWO SEATS IN EACH CLASS FOR TRIBAL OFFICER. The motion prevailed on a roll call vote with 8 AYES and 2 EXCUSED. Those voting AYE: Bradford, Olson, Tieszen, Killer, May, Schaefer, Bordeaux, Heinert. Those EXCUSED: Otten, Qualm.

The committee discussed the resolution and the additional training that tribal officers would need after they went through the state certification. The committee further discussed offering the two-week bridge course in the state, and having tribal officers complete the basic course and move right into the bridge course. The committee agreed that the methamphetamine epidemic is effecting the whole state, and relationships that are forged in the academy can continue past graduation and benefit the public safety of all South Dakotans.

Representative May requested that LRC Staff draft a letter requesting that the bridge training to be taught at the state level, to be sent to United States Senators Rounds and Thune, Congresswomen Noem, the United States Attorney's Office, the Bureau of Indian Affairs, and Tribal Government Officials.

Discussion about Public Safety and Law Enforcement on the Reservations

Mr. Christopher Saunsoci, Chief of Police, Yankton Sioux Tribe, Wagner, stated that the Yankton Sioux Tribe is a checkerboard of tribal and trust land with the jurisdiction not being contiguous. Both state and tribal officers are required to work together. Having the opportunity to train together would benefit both

the state and the tribe. The jurisdiction issues present a huge problem between tribal and state officials. Currently, the Yankton Sioux Tribe does not have an agreement with the state, county, or city governments. This presents a problem because state officers are hesitant to work on the reservation due to the complications of insurance and their liability while working on the reservation. This hurts South Dakota because there are non-native criminals on tribal lands and the Federal Bureau of Investigation will not arrest them because the crimes committed are not part of the Major Crimes Act.

Mr. Glenford Sam Sulley, Secretary, Yankton Sioux Tribe, Wagner, discussed that state and tribal relationships need to improve to effectively end the drug problem throughout South Dakota. He stated that it will take all nine tribes and the State of South Dakota to work together to bring an end to this problem in order to make South Dakota safe for everyone, especially our children.

The committee discussed the state of public safety on the Yankton Sioux Tribe. The committee agreed that the jurisdictional uncertainty either state or tribal when working on or around the reservations, hinder police officer's ability to provide effective public safety.

Mr. Royal Yellow Hawk, Tribal Council Representative, Rosebud Sioux Tribe, Rosebud, stated that it is important for the state government and tribal government to have an effective working relationship. Last year Governor Daugaard came to Rosebud and offered consultation with the tribe specifically on how the state could assist the tribe with drugs crossing through the borders. Mr. Yellow Hawk stated that with the increase of crime, both the state and the tribe need to recognize the four pillars of our relationship: land, education, healthcare, and economic development. He stated that public safety and law enforcement was the main discussion, but the state has no jurisdiction over tribal members on tribal lands.

The committee discussed the state of public safety and economic development on the Rosebud Sioux Tribe.

Public Testimony and Committee Discussion

Senator Heinert asked what the committee would like to accomplish this interim session.

Representative May stated that the committee needs to narrow down to one or two issues that need to be addressed. The public safety on the reservations is a major issue that needs to be focused on. Infrastructure should be another topic of focus because it builds opportunity for the reservation. This meeting should be the top priority for all tribal leaders and they all need to participate in the discussions for effective change to occur on the reservations.

Senator Bradford stated that in the past the best meetings were the ones that focused on issues between state and tribes, and took place on the reservations. The methamphetamine issues and shortage of tribal law enforcement has developed an environment where criminals are taking advantage of our reservations.

The committee discussed scheduling meetings on the reservations and continuing to encourage tribal officials to attend the meetings. The next meeting was narrowed down between the dates of July 6-8, or July 11-14, at the Yankton Reservation.

Adjournment

SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE MAY, TO ADJOURN. The motion prevailed unanimously on a voice vote.

The committee adjourned at 3:32 pm