

# BRIDGING THE JURISDICTIONAL VOID: CROSS-DEPUTIZATION AGREEMENTS IN INDIAN COUNTRY

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*“If I give you authority on the Res, we’ll have to get everything we need in less than two weeks. ‘Cause that’s how long I’d have before I’m drummed out of a job.”<sup>1</sup>*

## ABSTRACT

This Article examines cross-deputization agreements in Indian Country, focusing on the relationship between tribes and state and local governments and the impact cross-deputization agreements have on enforcing criminal law in Indian Country. After an explanation of the fundamentals of cross-deputization agreements, Section II examines the recent rise and evolution in tribal law enforcement powers. Section III then briefly addresses the current ability of tribal police officers to enforce laws off tribal land and the ability of state police to enforce laws on tribal land. Finally, Section IV examines the benefits and issues involved with cross-deputization agreements.

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1. *Longmire: The Calling Back* (Warner Horizon Television broadcast Sept. 10, 2015) (Cheyenne Police Chief’s response to Sheriff Longmire’s suggestion of cross-deputization).

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## I. INTRODUCTION

In April 2007, Utah police officers attempted to stop Uriah Kurip and Ute tribal member Todd Murray for speeding.<sup>2</sup> Kurip, the driver, failed to stop and fled onto the Uintah and Ouray Indian Reservation.<sup>3</sup> After an approximately thirty-minute chase, the vehicle ran off the highway and Kurip and Murray bailed out.<sup>4</sup> Other officers arrived, including Officer Vance Norton, who pursued Murray on tribal land located twenty-five miles inside the reservation where Murray died of a gunshot wound to the head. It is disputed

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2. Norton v. Ute Indian Tribe of the Uintah & Ouray Reservation, 862 F.3d 1236, 1241 (10th Cir. 2017).

3. *Id.*; see Geoff Liesik, *Death on a Reservation Brings Allegations of Conspiracy and a Search for Answers*, DESERET NEWS (July 7, 2013, 4:25 PM), <https://www.deseretnews.com/article/865582767/Death-on-a-reservation-brings-allegations-of-conspiracy-and-a-search-for-answers.html> (driver of Todd Murray was “a Native American, but he was not an enrolled tribal member at the time of the chase. His case was investigated by the Utah Highway Patrol and prosecuted in state court.”).

4. *Id.*

whether Murray shot himself or was shot by Norton.<sup>5</sup> In 2009, Murray's parents and his estate filed suit in state court against the officers under 42 U.S.C. § 1983, but the suit was removed to federal court, which granted summary judgment for the officers on qualified immunity grounds.<sup>6</sup> Murray's parents then sued the officers in tribal court, and the officers sought an injunction in federal court to prevent the tribal suit.<sup>7</sup> The Tenth Circuit held that the tribal court could maintain jurisdiction over the trespass claim, but not the false arrest, spoliation of evidence, or conspiracy claims.<sup>8</sup> None of the responding officers were cross-deputized to exercise law enforcement authority on the reservation.<sup>9</sup> The lack of a cross-deputization agreement meant there was confusion over whether Utah state police could pursue criminal suspects onto a reservation.<sup>10</sup>

"Cross-deputization" agreements authorize one entity's law enforcement officers to issue citations, make custodial arrests, and otherwise act as enforcement officers in the territory of another entity.<sup>11</sup> Without such an agreement, states generally lack jurisdiction to investigate crimes committed in Indian Country<sup>12</sup> against Indian victims,<sup>13</sup> while tribes may not exercise criminal jurisdiction over non-Indian citizens of the United States.<sup>14</sup> Some cases

5. *Id.* at 1242.

6. See *Jones v. Norton*, 809 F.3d 564, 576 (10th Cir. 2015).

7. *Ute Indian Tribe*, 862 F.3d at 1242.

8. See generally Alec Martinez, Norton v. Ute Indian Tribe: *Seeking Concrete Delineations in the Tribal Exhaustion Doctrine*, 95 DENV. L. REV. ONLINE 13, 16 (2017) (criticizing the court for concluding that the additional claims "did not implicate the Tribe's core sovereign interests").

9. *Ute Indian Tribe*, 862 F.3d at 1241.

10. Compare *Jones v. Norton*, 3 F. Supp. 3d 1170, 1195 (D. Utah 2014), *aff'd*, 809 F.3d 564 (10th Cir. 2015) (pursuit of Todd R. Murray "was reasonable under the circumstances"), with *Ute Indian Tribe*, 862 F.3d at 1245–47 (tribal court retained jurisdiction of trespass claim against state officer for pursuit of Todd R. Murray), and *Jones v. United States*, 846 F.3d 1343 (Fed. Cir. 2017) (pursuit of Todd R. Murray was cognizable under the "bad man" provision of the 1868 Ute Treaty).

11. *United States v. Washington*, 19 F. Supp. 3d 1126, 1151 (W.D. Wash. 1994).

12. To be consistent with federal statutory terms and the relevant case law, this Article uses the term "Indian" instead of "Native American." Additionally, 18 U.S.C. § 1151 defines "Indian Country" as: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

13. *United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016).

14. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 191 (1978), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in United States v. Lara*, 541 U.S. 193 (2004).

fall under the jurisdiction of the federal government,<sup>15</sup> but the Department of Justice declines to prosecute sixty-five percent of all reservation cases.<sup>16</sup>

Consequently, Indian reservations experience violent crime rates two and a half times higher than the national average, and American Indian women are ten times more likely to be murdered than other Americans.<sup>17</sup> A 2016 Department of Justice study stated that eighty-four percent of Indian women have experienced violence, fifty-six percent have experienced sexual violence, and over ninety percent have experienced violence at the hands of a nontribal member.<sup>18</sup> The cross-deputization of state and tribal police officers is one of the only means of filling the jurisdictional void created by separate state and tribal jurisdictions.<sup>19</sup>

According to a 2002 census of tribal law enforcement agencies, 165 tribal agencies employ at least one full-time sworn officer with arrest powers: ninety-three reported being recognized by a state as peace officers, and eighty-four tribes had a cross-deputization agreement with a neighboring nontribal authority.<sup>20</sup> However, these numbers are increasing. For example, the Southern Ute Indian Tribe signed its first cross-deputization agreements

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15. See 18 U.S.C. §§ 1152, 1153 (2012).

16. Michael Riley, *Promises, Justice Broken*, DENVER POST (Nov. 10, 2007, 12:48 PM), [http://www.denverpost.com/ci\\_7429560](http://www.denverpost.com/ci_7429560); see also *United States v. Bryant*, 136 S.Ct. 1954, 1959 (2016) (listing statistics); N. Bruce Duthu, Opinion, *Broken Justice in Indian Country*, N.Y. TIMES (Aug. 10, 2008), <https://www.nytimes.com/2008/08/11/opinion/11duthu.html?mtr-ref=www.google.com&assetType=opinion&mtrref=www.nytimes.com&gwh=FC49A6023CBBE1481ABA3AB43488016B&gwt=pay&assetType=opinion> (federal prosecutors brought only 606 criminal cases that year in all of Indian Country, a “shockingly low figure”); Matthew L.M. Fletcher, *ICT on Tribal Law and Order Act*, TURTLE TALK (Apr. 16, 2009), <http://turtletalk.wordpress.com/2009/04/16/ict-on-tribal-law-and-order-act/> (“Between 2004 and 2007, the United States declined to prosecute 62 percent of Indian country criminal cases referred to federal prosecutors, including 72 percent of child sexual crimes and 75 percent of adult rape cases.”); CAROLE GOLDBERG-AMBROSE, *PLANTING TAIL FEATHERS: TRIBAL SURVIVAL AND PUBLIC LAW 280 162* (1997) (“In practical application, federal law enforcement agents, particularly the Federal Bureau of Investigation and the U.S. Attorney’s Office, have demonstrated a history of declining to investigate or prosecute violations of the Major Crimes Act.”).

17. Timothy Williams, *Higher Crime, Fewer Charges on Indian Land*, N.Y. TIMES (Feb. 20, 2012), <http://www.nytimes.com/2012/02/21/us/on-indian-reservations-higher-crime-and-fewer-prosecutions.html?mcubz=0>.

18. See ANDRÉ B. ROSAY, U.S. DEP’T OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE RESEARCH REPORT: VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN 2, 33 (2016).

19. See *United States v. Sands*, 968 F.2d 1058, 1063 (10th Cir. 1992) (“[W]e note that cross-deputization may assist in filling a jurisdictional void.”).

20. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 205332, CENSUS OF TRIBAL JUSTICE AGENCIES IN INDIAN COUNTRY, 2002 5 (2005) [hereinafter TRIBAL CRIME DATA COLLECTION 2002].

with local law enforcement agencies in 2007.<sup>21</sup> In 2008, the Department of Justice included data from about 178 tribal law enforcement agencies operating in Indian Country in the Census of State and Local Law Enforcement Agencies.<sup>22</sup> The Justice Department also conducted a new census of tribal law enforcement agencies in 2017.<sup>23</sup> Despite the positives of cross-deputization agreements, issues remain, including officer liability, tribal sovereignty, cultural tensions, and local politics.

While cross-deputization is not exclusive to Indian law,<sup>24</sup> this Article will focus on the relationship between tribes and state and local governments and the impact cross-deputization agreements have on enforcing criminal law in Indian Country. Section II examines the recent rise and evolution in tribal law enforcement powers. Section III briefly addresses the current ability of tribal police to enforce laws off tribal land and the ability of state police to enforce laws on tribal land. Finally, Section IV examines both the benefits and issues involved with cross-deputization agreements.

## II. EVOLUTION OF TRIBAL LAW ENFORCEMENT POWERS

Tribal police power on the reservations is a relatively recent endeavor. Federal soldiers served a law enforcement function when the reservation system was established in the early 1800s.<sup>25</sup> Congress first appropriated funds for tribal police officers in 1878, and by 1890 there were over 700 officers.<sup>26</sup> Historical records regarding reservation policing from the turn of the century

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21. See Shane Benjamin, *Ute Tribes Get \$1.3 Million in Grants From Justice Dept.*, DURANGO HERALD (Sept. 16, 2010, 5:01 PM), <https://durangoherald.com/articles/14145>.

22. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 242584, TRIBAL CRIME DATA COLLECTION ACTIVITIES, 2013 2 (2013) [hereinafter TRIBAL CRIME DATA COLLECTION 2013].

23. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NCJ 250784, TRIBAL CRIME DATA COLLECTION ACTIVITIES, 2017 2 (2017) [hereinafter TRIBAL CRIME DATA COLLECTION ACTIVITIES 2017].

24. See Phillip Atiba Goff et al., *Crossing the Line of Legitimacy: The Impact of Cross-Deputization Policy on Crime Reporting*, 19 PSYCHOL. PUB. POL'Y & L. 250, 251 (2013) (discussing cross-deputization of local police officers to enforce federal immigration laws); cf. *United States v. Schrader*, 10 F.3d 1345, 1350 (8th Cir.1993) (tribal officers can act as federal officers under authorized contracts with the Department of Interior); *United States v. Medearis*, 775 F. Supp. 2d 1110, 1118 (D.S.D. 2011) (cross-deputizing tribal officers as federal officers); Larry Cunningham, Note, *Deputization of Indian Prosecutors: Protecting Indian Interests in Federal Court*, 88 GEO. L.J. 2187, 2188 (2000).

25. STEWART WAKELING ET AL., U.S. DEP'T OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE RESEARCH REPORT: POLICING ON AMERICAN INDIAN RESERVATIONS 41 (2001).

26. WILLIAM HAGAN, INDIAN POLICE AND JUDGES: EXPERIMENTS IN ACCULTURATION AND CONTROL 42-43 (Univ. of Neb. Press 1980) (1966).

through the 1950s are limited, but in the late 1960s and early 1970s, the Bureau of Indian Affairs (“BIA”) consolidated control of law enforcement authority on the reservations supported by funding from Congress.<sup>27</sup> Only in 1975 did tribes begin to regain management control over governmental programs such as tribal police forces.<sup>28</sup> There are now at least 178 tribal law enforcement agencies operating in Indian Country<sup>29</sup> and an estimated 2510 inmates confined in seventy-six Indian Country jails.<sup>30</sup>

Criminal jurisdiction in Indian Country has evolved over the past two centuries through a combination of case law and congressional acts.<sup>31</sup> The 1817 General Crimes Act provides for federal prosecution of crimes involving Indians and non-Indians.<sup>32</sup> In response to an 1883 Supreme Court case to the contrary,<sup>33</sup> the Major Crimes Act of 1885 placed certain crimes under exclusive federal jurisdiction if committed by an Indian against another Indian in Indian Country.<sup>34</sup> The states have exclusive jurisdiction over a crime committed in Indian country by a non-Indian against another non-Indian,<sup>35</sup> and over victimless crimes by a non-Indian.<sup>36</sup> In 1953, Congress passed Public Law 280 (“PL 280”), transferring federal criminal jurisdiction over Indian reservations to six states, with some exceptions, and provided other states with the option of assuming jurisdiction.<sup>37</sup> A 1968 amendment requires a tribe’s consent before states can assume jurisdiction.<sup>38</sup> In 1978, the Supreme

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27. WAKELING ET AL., *supra* note 25, at 42–43.

28. *Id.* at 43; *see* Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (codified at 25 U.S.C. § 530 (2012)).

29. TRIBAL CRIME DATA COLLECTION 2013, *supra* note 22, at 2.

30. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 250117, JAILS IN INDIAN COUNTRY, 2015 1 (2016).

31. *See generally* *General Guide to Criminal Jurisdiction in Indian Country*, TRIBAL L. & POL’Y INST., <http://www.tribal-institute.org/lists/jurisdiction.htm> (last visited Nov. 12, 2018).

32. *See* 18 U.S.C. § 1152 (2012); *United States v. Wheeler*, 435 U.S. 313, 324 n.21 (1978), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in* *United States v. Lara*, 541 U.S. 193 (2004).

33. *See Ex parte Kan-gi-shun-ca (Crow Dog)*, 109 U.S. 556 (1883).

34. 18 U.S.C. § 1153 (2012); *see also* *United States v. Kagama*, 118 U.S. 375, 376, 385 (1886) (upholding constitutionality of the Major Crimes Act).

35. *See* *Draper v. United States*, 164 U.S. 240 (1896); *United States v. McBratney*, 104 U.S. 621 (1881).

36. *Solem v. Bartlett*, 465 U.S. 463, 465 n.2 (1984) (noting that the *McBratney* rule applies to non-Indian victimless crimes); *see also* U.S. DEP’T OF JUSTICE, JUSTICE MANUAL: CRIMINAL RESOURCE MANUAL § 684 (“[A]s a general rule we believe that such offenders fall within the exclusive jurisdiction of state courts.”).

37. 18 U.S.C. § 1162 (2012) (California, Minnesota (except Red Lake Nation), Nebraska, Oregon (except Warm Springs Reservation), Wisconsin, and Alaska).

38. 25 U.S.C. § 1321 (2012).

Court held that tribes do not have inherent sovereignty to prosecute non-Indians.<sup>39</sup> Soon after, the Court held that charging a defendant in both federal and tribal court is not a Double Jeopardy violation.<sup>40</sup> In 1990, the Court held that tribal courts did not have criminal jurisdiction over nonmember Indians.<sup>41</sup> However, Congress passed a law in 1991 essentially overturning that decision.<sup>42</sup> Today, tribes maintain limited jurisdiction over crimes in Indian Country involving only Indians.<sup>43</sup> In 2010, the Tribal Law and Order Act expanded the felony sentencing powers of tribal courts.<sup>44</sup> Most recently, the Violence Against Women Reauthorization Act of 2013 (“VAWA”) granted tribal jurisdiction over non-Indians who commit domestic violence in Indian Country against an Indian spouse or domestic partner.<sup>45</sup>

Modern criminal jurisdiction in Indian Country is a “crazy quilt of jurisdiction,”<sup>46</sup> that often allows crimes to go unprosecuted.<sup>47</sup> One proposed solution is expanding tribal criminal jurisdiction,<sup>48</sup> or even subjecting tribal

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39. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in United States v. Lara*, 541 U.S. 193 (2004).

40. *United States v. Wheeler*, 435 U.S. 313, 329–30 (1978), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in United States v. Lara*, 541 U.S. 193 (2004).

41. *Duro v. Reina*, 495 U.S. 676, 692 (1990), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in United States v. Lara*, 541 U.S. 193 (2004).

42. Indian Tribal Jurisdiction Bill, Pub. L. No. 102-137, 105 Stat. 646 (1991) (codified as amended at 25 U.S.C. § 1301 (2012)).

43. *See United States v. Lara*, 541 U.S. 193 (2004); *cf.* Paul Spruhan, “Indians, in a Jurisdictional Sense”: *Tribal Citizenship and Other Forms of Non-Indian Consent to Tribal Criminal Jurisdiction*, 1 AM. INDIAN L. J. 79 (2017) (discussing ways non-Indians might consent to tribal jurisdiction).

44. Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2258 (codified as amended at 25 U.S.C. § 543 (2012)).

45. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in scattered sections of 42 U.S.C.).

46. Janine Robben, *Life in Indian Country: How the Knot of Criminal Jurisdiction Is Strangling Community Safety*, OR. ST. B. BULL., Jan. 2012, at 29 (quoting Professor Robert James Miller as describing criminal jurisdiction in Indian Country as “a crazy quilt of jurisdiction”); *see Nevada v. Hicks*, 533 U.S. 353, 383 (2001) (Souter, J., concurring) (using the phrase “unstable jurisdictional crazy quilt” in reference to a civil jurisdiction issue in Indian Country); *see also Lara*, 541 U.S. at 219 (Thomas, J., concurring) (“Federal Indian policy is, to say the least, schizophrenic.”).

47. *See, e.g., Tribal Courts and the Administration of Justice in Indian Country: Hearing Before the S. Comm. on Indian Affairs*, 110th Cong. 2 (2008) (statement of Sen. Byron L. Dorgan, Chairman, S. Comm. on Indian Affairs) (describing the low rate of prosecution of reported crimes in Indian Country).

48. Kevin K. Washburn, *Federal Criminal Law and Tribal Self-Determination*, 84 N.C. L. REV. 779, 845–55 (2006) (arguing that significant expansion of tribal criminal authority is necessary to achieve true tribal self-government).

courts to federal review like state courts.<sup>49</sup> Public Law 280 is particularly criticized by scholars for hindering the development of tribal law enforcement capabilities, which are already limited.<sup>50</sup> Many scholars favor the elimination of PL 280.<sup>51</sup> Another suggestion is a federal statute overturning the *Oliphant* decision, similar to the way that *Duro* was overturned, which would then grant tribal courts jurisdiction over crimes committed by non-Indians on the reservations.<sup>52</sup> This is highly unlikely, though, considering that the prospect of giving tribal courts very limited increased criminal jurisdiction over non-Indians nearly derailed the 2013 VAWA reauthorization when the 2000 and 2005 reauthorizations passed the Senate nearly unanimously.<sup>53</sup> Additional federal assistance is also unlikely; the proposed 2018 federal budget cuts \$21.4 million from funds for tribal law enforcement and removes sixteen

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49. David Wolitz, *Criminal Jurisdiction and the Nation-State: Toward Bounded Pluralism*, 91 OR. L. REV. 725, 781 (2013) (suggests subjecting tribal criminal jurisdiction to the same level of federal review that state criminal justice systems currently face).

50. See Jacqueline P. Hand & David C. Koelsch, *Shared Experiences, Divergent Outcomes: American Indian and Immigrant Victims of Domestic Violence*, 25 WIS. J. L. GENDER & SOC'Y 185, 198 (2010) ("The enactment of Public Law 280 has had the naive consequence of discouraging the development of tribal legal institutions, including courts and police forces despite the fact that it did not inhibit tribal jurisdiction over Indians."); Matthew Handler, Note, *Tribal Law and Disorder: A Look at a System of Broken Justice in Indian Country and the Steps Needed to Fix It*, 75 BROOK. L. REV. 261, 281 (2009) ("[T]ribally funded departments remain the least common and least robust form of law enforcement within tribal lands."); see also *Law Enforcement Shakeup Underway on Pine Ridge Reservation*, U.S. NEWS (April 27, 2017, 8:34 AM), <https://www.us-news.com/news/best-states/south-dakota/articles/2017-04-27/law-enforcement-shakeup-underway-on-pine-ridge-reservation> (thirty officers on the Pine Ridge Reservation police an area roughly the size of Connecticut); Timothy Williams, *Brutal Crimes Grip an Indian Reservation*, N.Y. TIMES (Feb. 2, 2012), <http://www.nytimes.com/2012/02/03/us/wind-river-indian-reservation-where-brutality-is-banal.html> (Wind River Reservation increasing from six to thirty-seven officers to police an area the size of Rhode Island and Delaware combined).

51. See Robert T. Anderson, *Negotiating Jurisdiction: Retroceding State Authority over Indian Country Granted by Public Law 280*, 87 WASH. L. REV. 915, 958 (2012) (calling PL 280 a relic and arguing that tribal governments should be allowed to determine whether and when state jurisdiction should be limited or removed); see also M. Brent Leonhard, *Returning Washington P.L. 280 Jurisdiction to its Original Consent-Based Grounds*, 47 GONZ. L. REV. 663 (2012).

52. See Ezekiel J.N. Fletcher, *Trapped in the Spring of 1978: The Continuing Impact of the Supreme Court's Decisions in Oliphant, Wheeler, and Martinez*, FED. LAW., March/April 2008, at 36; see also Samuel E. Ennis, *Reaffirming Indian Tribal Court Criminal Jurisdiction over Non-Indians: An Argument for a Statutory Abrogation of Oliphant*, 57 UCLA L. REV. 553, 573–604 (2009).

53. See Lorelei Laird, *Indian Tribes Are Retaking Jurisdiction over Domestic Violence on Their Own Land*, ABA J. (April 2015), <http://www.abajournal.com/magazine/article/indian-tribes-are-retaking-jurisdiction-over-domestic-violence-on-their-own> (Senator Grassley did not vote for the Violence Against Women Act reauthorization, stating that he believes tribal courts incapable of giving a fair trial to non-Indians); Jonathan Weisman, *Measure to Protect Women Stuck on Tribal Land Issue*, N.Y. TIMES (Feb. 10, 2013), <http://www.ny-times.com/2013/02/11/us/politics/violence-against-women-act-held-up-by-tribal-land-issue.html> (Senator Cornyn called the tribal jurisdiction component "the unconstitutional demands of special interests").



staff positions from the Office on Violence Against Women.<sup>54</sup> The most practical solutions to the jurisdictional void therefore likely involve the cooperation of states and tribes within the existing legal framework.

### III. INHERENT POLICE POWERS ON AND OFF TRIBAL LAND

Before looking at bridging the jurisdictional void, it is important to understand the current state of police powers of tribal and state officers on and off the reservations and where gaps exist and have been filled. The Indian Self-Determination and Education Assistance Act of 1975 (“PL 638”) gives tribes the opportunity to assume responsibility for many programs previously administered by the federal government, including police services, by contracting with the BIA.<sup>55</sup> The typical tribal police department is administered either by the tribe through a PL 638 contract or by the BIA.<sup>56</sup> Tribal police departments range in size from 400 persons for the Navajo Nation to a modest force of ten full-time deputies serving the Muckleshoot Tribe, which contracts for nontribal law enforcement services.<sup>57</sup> The powers of these police departments are dependent on the state’s status under PL 280, state law, and negotiations between the tribe and state governments.<sup>58</sup>

A state’s sovereignty no longer ends at a reservation’s border,<sup>59</sup> and when a state’s interests outside of a reservation are implicated, states “may regulate the activities even of tribe members on tribal land.”<sup>60</sup> While Congress determines which states maintain criminal jurisdiction over reservations, states regulate whether tribal officers can enforce state criminal laws on the reservation. Many state courts have determined their officers have the power of fresh pursuit onto reservations, and some tribal officers can even arrest suspects off the reservation.

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54. INDIAN AFFAIRS, U.S. DEP’T OF THE INTERIOR, BUDGET JUSTIFICATIONS AND PERFORMANCE INFORMATION FISCAL YEAR 2018 29 (2018); OFFICE ON VIOLENCE AGAINST WOMEN, DEP’T OF JUSTICE, FY 2018 BUDGET REQUEST AT A GLANCE 1 (2018).

55. WAKELING ET AL., *supra* note 25, at 7; *see* Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975) (codified as amended at 25 U.S.C. § 450).

56. WAKELING ET AL., *supra* note 25, at 9.

57. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 234217, TRIBAL LAW ENFORCEMENT, 2008 1 (2011); M. Scott Sotebeer, *Tribal Policing Partnerships: The Muckleshoot Tribe and the Sheriff*, COMMUNITY POLICING DISPATCH, Jan. 2013.

58. *See* Douglas P. Payne, *Criminal Jurisdiction in Indian Country: Complicated by Design, but Not Lawless*, 54 ADVOCATE 48, 48 (2011) (“Indian law is inconsistent not only over time, but by subject, state and reservation.”).

59. *Nevada v. Hicks*, 533 U.S. 353, 361 (2001).

60. *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 151 (1980).

### A. STATE CRIMINAL JURISDICTION ON RESERVATIONS

Congress has granted a number of states full criminal jurisdiction on the reservations, while some states have received criminal jurisdiction over specific Indian reservations.<sup>61</sup> When Congress enacted PL 280 in 1953, Congress also granted the remaining states the authority to assume civil and criminal jurisdiction over the tribes within their respective states.<sup>62</sup> That power, however, was limited by a 1968 Amendment requiring approval of the tribe before the state could assume jurisdiction.<sup>63</sup>

In total, thirteen of the thirty-six states with Indian tribes have already closed the jurisdiction gap by assuming criminal jurisdiction over the reservations. In addition to the six states mandated under PL 280,<sup>64</sup> Florida and South Carolina have assumed criminal jurisdiction over tribes in their states under the optional component.<sup>65</sup> Nevada assumed optional PL 280 criminal jurisdiction in 1955 but ceded that jurisdiction over all tribes to the federal government by 1988.<sup>66</sup> Congress separately granted criminal jurisdiction over tribes to Kansas and New York in 1948.<sup>67</sup> Under the Indian Land Claims Settlement Act, Connecticut, Maine, and Rhode Island maintain criminal jurisdiction over recognized Indian tribes.<sup>68</sup> Not all grants are exclusive—some are concurrent with federal jurisdiction.<sup>69</sup>

Outside of PL 280, one area where non-full jurisdiction states have attempted, with some success, to prosecute Indians in state court is on high-

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61. For an in-depth directory of jurisdiction by tribe, see Carole Goldberg, *Tribal Jurisdictional Status Analysis*, TRIBAL L. & POL'Y INST. (Feb. 16, 2010), <http://www.tribal-institute.org/lists/tjsa.htm>.

62. See 25 U.S.C. § 1321 (2012).

63. See Indian Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (codified as amended at 25 U.S.C. §§ 1301–1303 (2012)); *United States v. Burnett*, 777 F.2d 593, 597 (10th Cir. 1985) (“Congress has provided . . . a statutory method by which a state, with the consent of the tribe, can assume jurisdiction over Indian country.”); Emma Garrison, *Baffling Distinctions Between Criminal and Regulatory: How Public Law 280 Allows Vague Notions of State Policy to Trump Tribal Sovereignty*, 8 J. GENDER RACE & JUST. 449, 456 (2004).

64. See *supra* note 37.

65. See FLA. STAT. § 285.16 (2018); S.C. CODE ANN. § 27-16 (2018).

66. CAROLE GOLDBERG & HEATHER V. SINGLETON, FINAL REPORT: LAW ENFORCEMENT AND CRIMINAL JUSTICE UNDER PUBLIC LAW 280, DOCUMENT NO. 222585 (2008).

67. 18 U.S.C. § 3243 (2012) (Kansas); 25 U.S.C. § 232 (2012) (New York).

68. 25 U.S.C. §§ 1708–1775.

69. See, e.g., *Negonsott v. Samuels*, 507 U.S. 99, 105 (1993) (the Kansas Act confers only concurrent jurisdiction on the state). Additionally, these laws are limited by the Indian Gaming Regulatory Act. See *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)*, 853 F.3d 618 (1st Cir. 2017).

ways running through reservations. The Supreme Court held in *White Mountain Apache Tribe v. Backer*<sup>70</sup> that states lack civil jurisdiction to levy taxes for activities on BIA or tribal roads. However, the nontribal petitioners conceded liability to the state for both licensing and taxes attributable to travel on state highways within the reservation.<sup>71</sup> As part of the reservations, state highways remain within the territorial jurisdiction of the tribe.<sup>72</sup> Most courts in non-PL 280 states have rejected arguments that easements or right-of-ways from tribes grant states criminal jurisdiction on state highways.<sup>73</sup> The same is true for the exempted reservations in PL 280 states.<sup>74</sup> However, some courts have found state criminal jurisdiction over highways if the road is owned by the state in fee,<sup>75</sup> or if granted jurisdiction by the tribe.<sup>76</sup> But for the most part, states have no special jurisdiction over their highways on reservations, and responsibility falls to the tribal police.<sup>77</sup> Therefore, many gaps remain in police coverage in states without full jurisdiction over reservations.

#### B. WHERE ARE TRIBAL POLICE CONSIDERED PEACE OFFICERS?

While states have criminal jurisdiction over tribal members for crimes committed off the reservation,<sup>78</sup> tribes possess the power to exclude persons from tribal lands, including state police officers in some instances.<sup>79</sup> Tribal

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70. 448 U.S. 136 (1980).

71. *Backer*, 448 U.S. at 140 n.6; cf. *Montana v. United States*, 450 U.S. 544, 565 (1981) (“To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.”).

72. *Ortez-Barraza v. United States*, 512 F.2d 1176, 1180 (9th Cir. 1975). *But see* *Strate v. A-1 Contractors*, 520 U.S. 438, 455–56 (1997) (Court held that a tribal court may not hear civil claims against nonmembers arising from accidents on a state highway that crosses a reservation because the tribe had relinquished all gatekeeping rights over the highway right-of-way).

73. *See In re Denetclaw*, 320 P.2d 697, 700 (Ariz. 1958); *State v. Ambro*, 123 P.3d 710, 716 (Idaho Ct. App. 2005) (state lacked jurisdiction to prosecute Indian for possession of methamphetamine, even though it was found during traffic stop on state highway); *State v. Spotted Horse*, 462 N.W.2d 463, 467–68 (S.D. 1990).

74. *See Sigana v. Bailey*, 164 N.W.2d 886, 891 (Minn. 1969) (state did not have jurisdiction to charge and prosecute traffic offenses allegedly committed by enrolled member of Indian tribe on state highway within boundaries of Red Lake Reservation); *State v. Webster*, 338 N.W.2d 474, 483 (Wis. 1983) (state did not have jurisdiction to charge and prosecute traffic offenses allegedly committed by enrolled member of Menominee Indian Tribe on state highway within boundaries of Menominee Reservation).

75. *Somday v. Rhay*, 406 P.2d 931, 934 (Wash. 1965); *State v. Pink*, 185 P.3d 634, 637–38 (Wash. Ct. App. 2008).

76. *See State v. Dugan*, 277 S.E.2d 842 (N.C. Ct. App. 1981).

77. *See Skokomish Indian Tribe v. Mosbarger*, 7 NICS App. 90 (Skokomish Ct. App. 2006) (tribe maintained jurisdiction over nonmember for civil traffic enforcement).

78. *See Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148–49 (1973).

79. *See, e.g., Norton v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 862 F.3d 1236, 1244–45 (10th Cir. 2017); *State v. Spotted Horse*, 462 N.W.2d 463, 467 (S.D. 1990); *see also Duro*

sovereignty in non-PL 280 states prevents state police officers from enforcing state laws in Indian Country, and many tribes are unable to provide comparable police coverage.<sup>80</sup> But while many tribal police forces are limited to enforcing only tribal law, over half of states with a federally recognized Indian tribe grant some form of authority to tribal police officers to enforce state laws.<sup>81</sup> This recognition is critical because a tribal officer lacks the power to arrest, charge, jail, or prosecute non-Indian offenders for violations of state law on reservation land without some additional state authority.<sup>82</sup>

Fifteen states expressly grant authority to tribal law enforcement officers to enforce state laws.<sup>83</sup> Most of these states require the tribal officers to meet state training standards and liability requirements.<sup>84</sup> For example, Arizona tribal police officers must be certificated through the state Peace Officer Standards and Training Board to have general police authority.<sup>85</sup> Four states require a cross-deputization agreement between a tribe and the state or a state subdivision.<sup>86</sup> Many full criminal jurisdiction states still cooperate with tribal law enforcement, and eight recognize tribal police as peace officers able to enforce state law without any need for cross-deputization agreements.<sup>87</sup> With

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v. *Reina*, 495 U.S. 676, 696 (1990), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in* *United States v. Lara*, 541 U.S. 193 (2004). For the purpose of this Article, “State Police” refers to nontribal law enforcement officers enforcing state law, including city police officers, county sheriffs, state troopers, and highway patrol officers.

80. *See supra* note 50.

81. *See* Mathew Lysakowski & Priya S. Jones, *Tribal Law Enforcement Authority to Enforce State Laws*, 18 POLICE PRAC. & RES. 1, 8 (2016) (indexing the authorization status and statutes in all thirty-six states).

82. *Duro*, 495 U.S. at 696–97.

83. ARIZ. REV. STAT. ANN. § 13-3874(A) (2018); COLO. REV. STAT. ANN. §§ 16-2.5-106 to -107 (West 2018); CONN. GEN. STAT. § 53a-3(9) (2018); FLA. STAT. § 285.18 (2018); IOWA CODE § 80B.3 (2018); KAN. STAT. ANN. § 22-2401a-3a (2018); ME. STAT. tit. 30, § 6206-B, 6210 (2018); MINN. STAT. §§ 626.90–626.94 (2018); NEB. REV. STAT. §§ 81-1401(8)(a), 81-1414(2) (2018); NEV. REV. STAT. ANN. § 171.1255 (2017); N.C. GEN. STAT. § 1E-10 (2018); OKLA. STAT. tit. 21, § 99 (2018); OR. REV. STAT. § 133.430(1) (2018); S.C. CODE ANN. § 27-16-70 (2018) (the recognized tribe in South Carolina does not have a law enforcement agency at this time); WASH. REV. CODE § 10.92.020 (2018); WIS. STAT. § 165.92 (2018); *see also* Iowa Att’y Gen. Op. No. 06-9-1 (Sept. 19, 2006); Neb. Att’y Gen. Op. No. 97-061 (Dec. 3, 1997); Nev. Att’y Gen. Op. No. 2003-07 (Oct. 23, 2003); Nev. Att’y Gen. Op. No. 94-19 (June 6, 1994); Lysakowski, *supra* note 81, at 8.

84. Lysakowski, *supra* note 81, at 7.

85. *See* *State v. Nelson*, 90 P.3d 206, 207 (Ariz. Ct. App. 2004).

86. CAL. PENAL CODE § 830.6(b) (West 2018); MICH. COMP. LAWS § 28.609 (2018); N.M. STAT. ANN. § 29-1-11 (2018); N.D. CENT. CODE § 12-63-02.2 (2017).

87. CONN. GEN. STAT. § 53a-3(9) (2018); FLA. STAT. § 285.18(2)(c) (2018); KAN. STAT. ANN. § 22-2401a(3)(a) (2018); ME. STAT. tit. 30, §§ 6206-B, 6210 (2018); MINN. STAT. §§ 626.90–626.94 (2018); NEB. REV. STAT. § 81-1414(2) (2018); OR. REV. STAT. § 133.430 (2018); WIS. STAT. § 165.92 (2018).

a few exceptions,<sup>88</sup> the remaining states with Indian tribes do not provide tribal officers with statutory police authority.<sup>89</sup> As a result, fifty-two tribes in the continental United States are unable to enforce state laws on their reservations without a specific local agreement.<sup>90</sup>

But the situation is improving. In 2002, only about fifty-seven percent of the 165 tribes with tribal law enforcement officers reported being recognized by a state to have peace officer authority.<sup>91</sup> Oklahoma and Connecticut passed laws granting tribal law enforcement officers authority to enforce state laws in 2013, and North Carolina followed suit in 2015.<sup>92</sup> Efforts to pass similar legislation failed in Idaho in 2010 and 2011<sup>93</sup> and in Wyoming in 2012 and 2013.<sup>94</sup> However, efforts continue to be made to pass similar laws in the future.<sup>95</sup>

### C. WHO HAS THE POWER OF FRESH PURSUIT?

Criminals are free to cross jurisdictional borders; therefore, it is important that pursuing police officers, both tribal and state, have the power of fresh pursuit.<sup>96</sup> Historically, police officers did not have authority at common law to make “warrantless arrests outside the jurisdiction of the political entity that appointed them to office . . . .”<sup>97</sup> However, the intrastate doctrine of fresh

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88. Three states provide law enforcement authority to individual tribal police forces. *See* ALA. CODE §§ 36-21-120 to -124 (2018) (listing the powers of police officers appointed by the Mowa Band of Choctaw Indians); N.Y. INDIAN LAW § 114 (McKinney 2018) (providing the St. Regis Mohawk Tribe with statutory police authority); TEX. CODE CRIM. PROC. ANN. art. 2.126 (West 2017) (providing the Alabama-Coushatta Indian Tribe with statutory police authority).

89. Alaska, Idaho, Indiana, Louisiana, Massachusetts, Mississippi, Montana, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Wyoming are the states with Indian tribes that do not provide officers with statutory police authority.

90. Alaskan tribes are not included in the 2002 tribal police census. *See* TRIBAL CRIME DATA COLLECTION 2002, *supra* note 20, at iii.

91. TRIBAL CRIME DATA COLLECTION 2002, *supra* note 20, at 5.

92. 2013 Conn. Acts 685 (Reg. Sess.); 2013 Okla. Sess. Laws 1270; 2015 N.C. Sess. Laws 1450.

93. Betsy Z. Russell, *Tribal Policing Measure Fails*, SPOKESMAN-REV. (Feb. 18, 2011), <http://www.spokesman.com/stories/2011/feb/18/tribal-policing-measure-fails/>.

94. Ron Feemster, *Cheyenne's Focus on Feds Fails to Solve Reservation's Jurisdiction Woes*, WYOFILE (Feb. 19, 2013), <http://www.wyofile.com/specialreport/cheyennes-focus-on-feds-fails-to-solve-reservations-jurisdiction-woes/>.

95. *See* OFFICE OF PERFORMANCE EVALUATIONS, IDAHO LEGISLATURE, STATE JURISDICTION IN INDIAN COUNTRY 41 (2017) (recommending “legislation to provide limited state authority to tribal police to enforce criminal state laws”).

96. *See* Edmund F. Fennessy, Jr. & Kent B. Joscelyn, *A National Study of Hot Pursuit*, 48 DENV. L.J. 389, 390 (1972) (explaining “hot pursuit” is the more famous term, while “fresh pursuit” is the term associated with police activity that crosses jurisdictional lines).

97. *See* State v. Brown, 39 N.E.3d 496, 499 (Ohio 2015).

pursuit between different cities and counties for felonies did exist at common law and was expanded in most states by statute.<sup>98</sup> At the interstate level, authorizing fresh pursuit is now a standard practice. The Uniform Act on Fresh Pursuit allows officers to arrest a suspect after a chase into another state,<sup>99</sup> but most states require that officers immediately present the suspect to a magistrate in the state where the arrest took place to determine whether the arrest was valid.<sup>100</sup> Finally, while most cases involving Indian reservations do not involve the Uniform Act, fresh-pursuit litigation is marked by a judicial reluctance to permit the absurdity of suspects escaping by crossing jurisdictional lines.<sup>101</sup>

In the international context, the United Nations Convention on the Law of the Sea grants a coastal state the right to pursue and arrest ships escaping to international waters, but pursuit must stop at another nation's territorial boundary.<sup>102</sup> The United States and Canada signed the Integrated Cross-border Law Enforcement Operations Act allowing cross-border pursuits on the international waterways between the two countries.<sup>103</sup> While they may negotiate a land agreement in the future, allowing American police to arrest Canadian citizens in Canada is controversial.<sup>104</sup> The United States and Mexico originally negotiated a fresh-pursuit treaty in 1896, but after the United States' intervention during the Mexican Civil War, the Mexican government

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98. *Poss v. State*, 305 S.E.2d 884, 886 (Ga. Ct. App. 1983) (fresh pursuit is a "recognized" common-law exception to state statute limiting municipal police power to corporate limits of the municipality); *Commonwealth v. Montgomery*, 518 A.2d 1197, 1201 (Pa. 1986) (fresh pursuit permitted extra jurisdictional *Terry* stop); see also Judith V. Royster & Rory SnowArrow Fausett, *Fresh Pursuit onto Native American Reservations: State Rights "To Pursue Savage Hostile Indian Marauders Across the Border"*, 59 U. COLO. L. REV. 191, 224–29 (1988).

99. *District of Columbia v. Perry*, 215 A.2d 845, 847 (D.C. 1966). The act was first proposed at the 1934 Attorney General's Conference on Crimes and adopted in the 1949 Handbook on Interstate Crime Control. Thirty-nine states enacted the law within three years. See Brevard E. Cribfield & Mitchell Wendell, *Crime Control and Uniformity of Criminal Laws*, 42 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 571, 572–73 (1952).

100. Che Odom, *Police Violate Due Process Rights by Crossing State Borders and Ignoring Fresh-Pursuit Laws*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 319, 320 (2010).

101. See *State v. Bickham*, 404 So. 2d 929, 932–33 (La. 1981).

102. See Craig H. Allen, *Doctrine of Hot Pursuit: A Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technologies and Practices*, 20 OCEAN DEV. & INT'L L. 309, 312–13 (1989).

103. See *Maritime Interdiction, U.S.- Can.*, at 2, May 26, 2009, T.I.A.S. No. 12-1011.

104. Mark Gollom, *Cross-Border Policing Provokes Sovereignty Worries*, CBC NEWS (July 11, 2012, 5:27 AM), <http://www.cbc.ca/news/canada/cross-border-policing-provokes-sovereignty-worries-1.1162116>.

refused to ratify a subsequent treaty, and today there is no fresh-pursuit agreement between the two countries.<sup>105</sup>

Fresh pursuit into, and from, Indian reservations represents a field of Indian law that states have added to the tangled patchwork of criminal jurisdiction.<sup>106</sup> Both state and tribal powers to pursue suspects across jurisdictional lines have evolved piecemeal through court cases, legislation, and negotiations. Rather than following principles of the Uniform Act, fresh-pursuit cases across reservation boundaries involve interpretations of federal and state statutes, peace officer status, and state and tribal sovereignty.

### 1. *State Police Power to Pursue onto the Reservation*

The ability of criminals to commit crimes outside a reservation and flee unimpeded onto the reservation harms both Indians and non-Indians.<sup>107</sup> While the issue involved in fresh pursuit onto a reservation is the interference with tribal self-government,<sup>108</sup> on numerous occasions, most recently in *Nevada v. Hicks*, the Supreme Court has stated that state laws may be applied on the reservations.<sup>109</sup> Scholars are split on the applicability of *Hicks* to officers pursuing suspects onto a reservation,<sup>110</sup> but the few lower courts to consider *Hicks* have not found it controlling.<sup>111</sup> Even before *Hicks*, courts

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105. See NICHOLAS M POULANTZAS, *THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW* 15 (2002).

106. See generally Erin E. White, *Fresh Pursuit: A Survey of Law Among States with Large Land Based Tribes*, 3 AM. INDIAN L.J. 227 (2014) (arguing that Congress should enact a uniform fresh-pursuit law applicable to both tribes and states).

107. *State v. Spotted Horse*, 462 N.W.2d 463, 469 (S.D. 1990).

108. Royster, *supra* note 98, at 279 (“Native governments should be accorded the same common-law recognition as other sovereigns: that fresh pursuit across their borders is valid only if and as the sovereign authorizes.”).

109. See *Nevada v. Hicks*, 533 U.S. 353, 366 (2001) (“Nothing in the federal statutory scheme prescribes, or even remotely suggests, that state officers cannot enter a reservation (including Indian-fee land) to investigate or prosecute violations of state law occurring off the reservation.”); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973) (listing cases).

110. Compare Laura A. Shattuck, Comment, *State v. Cummings: Collision with Nevada v. Hicks*, 51 S.D. L. REV. 373, 403 (2006) (Supreme Court’s statements in *Hicks* appear to imply state criminal jurisdiction over the reservations for off-reservation offenses), with Expert Report and Affidavit by Alex T. Skibine at 10, *Jones v. Norton*, 3 F. Supp. 3d 1170 (D. Utah 2012) (No. 209CV00730), 2012 WL 6877606 (“*Hicks* is of very little relevance, if any, in assessing the legality of hot pursuit by state officers inside Indian reservations.”).

111. See, e.g., *State v. Harrison*, 2010-NMSC-038, ¶¶ 25–27, 148 N.M. 500, 238 P.3d 869 (*Hicks* only applicable absent Tribal procedures); *State v. Cummings*, 2004 S.D. 56, ¶ 12, 679 N.W.2d 484 (*Hicks* does not apply to fresh pursuit).

upheld the ability of states to issue search warrants on reservations for off-reservation crimes.<sup>112</sup>

For law enforcement officers accorded full criminal authority over persons on the reservation, an on-reservation arrest for an off-reservation crime is valid whether the suspect is an Indian or not.<sup>113</sup> In other states, early cases held that state police could arrest an Indian defendant on a reservation even without fresh pursuit,<sup>114</sup> but as one scholar noted, these cases seemed “premiered primarily on the absence of tribal extradition procedures.”<sup>115</sup> Courts have also upheld the arrest of non-Indian suspects on the reservation for off-reservation crimes, reasoning that these arrests present no infringement on tribal sovereignty since state court jurisdiction extends over crimes between non-Indians, even on the reservation.<sup>116</sup> Later cases rejected the idea that fresh pursuit of an Indian onto a reservation violates tribal sovereignty, since it does not interfere with the tribe’s power to “regulate its internal and social relations.”<sup>117</sup>

Not until 1990 did a court reject the power of state police officers to pursue a suspect onto a reservation.<sup>118</sup> In *State v. Spotted Horse*, the South Dakota Supreme Court held that state police could not pursue suspects onto the reservation and therefore suppressed evidence gathered from the illegal arrest.<sup>119</sup> However, the court allowed the trial court to maintain jurisdiction

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112. *State v. Mathews*, 986 P.2d 323, 337 (Idaho 1999); *State v. Clark*, 308 P.3d 590, 596 (Wash. 2013). *But see* *United States v. Baker*, 894 F.2d 1144, 1146 (10th Cir. 1990) (holding that the search warrant was void because the property was within reservation and was rented by enrolled member); *United States v. Peltier*, 344 F. Supp. 2d 539, 547–48 (E.D. Mich. 2004) (“state judicial officer did not have authority to issue warrant to search premises within Indian country”).

113. *See* *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987), *superseded by statute*, Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988), *as recognized in* *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782 (2014).

114. *See In re Little Light*, 598 P.2d 572, 573 (Mont. 1979); *State ex rel. Old Elk v. Dist. Court*, 552 P.2d 1394, 1398 (Mont. 1976); *Fournier v. Roed*, 161 N.W.2d 458, 477 (N.D. 1968); *see also* *Op. Sol. Dep’t of Interior M-36717* (Dec. 22, 1967).

115. *Royster*, *supra* note 98, at 227; *see also* *City of Farmington v. Benally*, 892 P.2d 629, 631 (N.M. Ct. App. 1995) (cannot arrest Indian suspect if tribe has extradition procedure).

116. *See* *State v. Herber*, 598 P.2d 1033, 1035 (Ariz. Ct. App. 1979); *State v. Snyder*, 807 P.2d 55, 58 (Idaho 1991); *State v. Thomas*, 760 P.2d 96, 98 (Mont. 1988); *see also* *United States v. McBratney*, 104 U.S. 621, 621–22 (1881).

117. *State v. Lupe*, 889 P.2d 4, 7 (Ariz. Ct. App. 1994).

118. *State v. Spotted Horse*, 462 N.W.2d 463, 467 (S.D. 1990).

119. *Id.* at 468–69.



over the defendant for his off-reservation crimes after requiring the suppression of evidence obtained on the reservation as the fruit of an illegal arrest.<sup>120</sup> The South Dakota Supreme Court reaffirmed its decision in 2004.<sup>121</sup>

The application of *Spotted Horse* is not controlling outside of South Dakota, and the United States Supreme Court has repeatedly declined to hear the issue.<sup>122</sup> In *United States v. Patch*, for example, a deputy sheriff patrolling a state highway on a reservation pursued a suspected traffic violator off the highway onto a reservation.<sup>123</sup> The Ninth Circuit held that an officer who observes a traffic violation within his jurisdiction may pursue the offender into Indian Country to make an arrest based upon the hot pursuit doctrine.<sup>124</sup> The court did not address whether the tribe had extradition procedures, instead reasoning that the officer was justified in following the suspect to a place where he could effect a stop.<sup>125</sup> Courts in most states have similarly held that state officers can pursue suspects onto tribal land.<sup>126</sup>

Cross-deputization agreements would reduce the general confusion that state officers face when pursuing a suspect towards a reservation. While tribes may not like ceding authority for state police to pursue onto the reservation, courts will likely find the states have that power inherently.<sup>127</sup> By negotiating with state and local governments, tribes can receive concessions, including the power for tribal officers to pursue onto state land, which courts say they do not inherently possess.

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120. *Id.* at 469.

121. *State v. Cummings*, 2004 S.D. 56, ¶¶ 8–9, 679 N.W.2d 484 (no fresh pursuit absent a cross-deputization agreement).

122. *See, e.g., Jones v. Norton*, 809 F.3d 564 (10th Cir. 2015), *cert. denied*, 137 S. Ct. 197 (2016); *United States v. Patch*, 114 F.3d 131 (9th Cir. 1997), *cert. denied*, 522 U.S. 983 (1997); *Spotted Horse*, 462 N.W.2d 463, *cert. denied*, 500 U.S. 928 (1991).

123. *Patch*, 114 F.3d at 132–34.

124. *Id.* at 134 (citing to *State v. Lupe*, 889 P.2d 4 (Ariz. Ct. App. 1994)).

125. *Id.*

126. *See United States v. Mikulski*, 317 F.3d 1228, 1231 (10th Cir. 2003) (citing *Ross v. Neff*, 905 F.2d 1349, 1354 n.6 (10th Cir. 1990)) (Oklahoma); *State v. Lupe*, 889 P.2d 4, 7 (Ariz. Ct. App. 1994); *City of Cut Bank v. Bird*, 2001 MT 296, ¶ 14, 307 Mont. 460, ¶ 14, 38 P.3d 804, ¶ 14; *State v. Harrison*, 2010-NMSC-038, ¶ 13, 148 N.M. 500, 238 P.3d 869 (if suspect is non-Indian); *Benally v. Marcum*, 553 P.2d 1270, 1273 (N.M. 1976) (if Indian suspect committed a felony); *Fournier v. Roed*, 161 N.W.2d 458, 467 (N.D. 1968); *State v. Waters*, 971 P.2d 538, 542–543 (Wash. Ct. App. 1999); *see also Nev. Att’y. Gen. Op. No. 2012-01* (Jan. 3, 2012); *Wis. Att’y Gen. Op. No. 50-85* (Dec. 30, 1985) (state officers can pursue onto Menominee Reservation).

127. *Cf. State v. Eriksen*, 241 P.3d 399, 406–407 (Wash. 2010) (citing *Lummi Nation v. Scarborough*, No.2008–CRCO–2084 (Lummi Tribal Ct. Jan. 5, 2009)) (tribal court recognized authority of county sheriff deputy to come onto the reservation in pursuit of a tribal member who allegedly stole from a convenience store outside the reservation).

## 2. Tribal Police Power to Pursue off the Reservation

Although many tribal police officers have the power to pursue suspects off the reservation, this power arises either from the tribal officer's status as a state peace officer or under a cross-deputization statute. No state court has found that tribal officers have an inherent power of fresh pursuit independent of some other authority.<sup>128</sup> For tribal officers who can pursue offenders off the reservation, but lack the jurisdiction to prosecute the suspect, "tribal officers may exercise their power to detain the offender and transport him to the proper authorities."<sup>129</sup>

In a sharply criticized 5-4 decision, and after reconsidering the case twice, the Washington Supreme Court held that tribal police lacked the inherent authority to pursue a suspect outside an Indian reservation.<sup>130</sup> In *Eriksen I*, a unanimous court held that as general authority peace officers under state law, tribal officers could pursue suspects off a reservation.<sup>131</sup> On reconsideration in *Eriksen II*, a divided court again affirmed and held 6-3 that the fresh pursuit doctrine applied to tribal police as a necessary power to enforce the tribe's internal laws.<sup>132</sup> The court reasoned that the "power to regulate is only meaningful when combined with the power to enforce."<sup>133</sup> Finally, on a second reconsideration in *Eriksen III*, the court reversed 5-4, resting its reasoning on Washington statutes requiring certain training and liability requirements for tribal officers to become general authority Washington peace officers.<sup>134</sup> The court reasoned that creating a doctrine of fresh

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128. Developments in the Law, *Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects Onto State Land*, 129 HARV. L. REV. 1685, 1689 (2016) [hereinafter *Fresh Pursuit from Indian Country*].

129. *Duro v. Reina*, 495 U.S. 676, 697 (1990), *superseded by statute*, Civil Rights Act of 1968, Pub. L. No. 90-284, § 201, 82 Stat. 73, 77, *as recognized in* *United States v. Lara*, 541 U.S. 193 (2004); *see also* *United States v. Terry*, 400 F.3d 575, 580 (8th Cir. 2005) (held in the tribal jail overnight); *United States v. Keys*, 390 F. Supp. 2d 875, 884 (D.N.D. 2005) (detention by tribal police became unreasonable after two days); *State v. Schmuck*, 850 P.2d 1332, 1342 (Wash. 1993) (en banc) (tribe retained the right to stop non-Indian violators and to detain them for delivery to state authorities for prosecution); *Colyer v. Dep't of Transp.*, 2009 WY 43, ¶ 21, 203 P.3d 1104, 1110 (Wyo. 2009) (reservation officer may detain suspect for formal arrest by a state officer).

130. *State v. Eriksen*, 216 P.3d 382 (Wash. 2009) (*Eriksen I*), *superseded by*, 241 P.3d 399 (Wash. 2010) (*Eriksen II*), *superseded by*, 259 P.3d 1079 (Wash. 2011) (*Eriksen III*); *see also* Kevin Naud, Jr., Comment, *Fleeing East from Indian Country: State v. Eriksen and Tribal Inherent Sovereign Authority to Continue Cross-Jurisdictional Fresh Pursuit*, 87 WASH. L. REV. 1251, 1274 (2012) ("Eriksen III contains flawed legal analysis and ignores the public policy directives of the Washington State Legislature.").

131. *Eriksen I*, 216 P.3d at 392.

132. *Eriksen II*, 241 P.3d at 406.

133. *Id.* (citing *Settler v. Lameer*, 507 F.2d 231, 238 (9th Cir. 1974)).

134. *Eriksen III*, 259 P.3d at 1083.

pursuit based only on a tribe's inherent authority would effectively abrogate this statutory scheme.<sup>135</sup> The majority concluded that this jurisdictional gap "must be addressed by use of political and legislative tools, such as cross-deputization or mutual aid pacts."<sup>136</sup> In a dissent, Justice Owens argued that tribal power of fresh pursuit fits within *Montana's* second exception as "necessary to protect tribal self-government or to control internal relations."<sup>137</sup> However, scholars note that the "fact that tribes have thus far survived without this power belies the claim that it is necessary to avert catastrophic consequences."<sup>138</sup>

States generally allow tribal fresh pursuit onto state land if they are recognized as state peace officers or governed by a cross-deputization agreement.<sup>139</sup> As state-recognized peace officers, tribal officers can pursue suspects onto state land in at least eight states.<sup>140</sup> Other states require tribal officers to be cross-deputized first.<sup>141</sup> Only Nevada authorizes tribal officers to pursue suspects onto state land without meeting some requirement.<sup>142</sup> North Dakota recognizes fresh pursuit from a reservation as a lawful citizen's arrest.<sup>143</sup> Citing a tribal statute, a South Dakota federal district court found an arrest by tribal officers that occurred outside the Rosebud Sioux Reservation would have been lawful if the officers had been in fresh pursuit.<sup>144</sup>

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135. *Id.*

136. *Id.*; see also *State v. Spotted Horse*, 462 N.W.2d 463, 469 (S.D. 1990) ("We would hope . . . that both tribal leaders and governmental officials will sit down and work out treaties that will remedy this situation.").

137. *Eriksen III*, 259 P.3d at 1086–87 (Owens, J., dissenting) (citing *Montana v. United States*, 450 U.S. 544, 566 (1981)).

138. *Fresh Pursuit from Indian Country*, *supra* note 128, at 1694.

139. While most cases involve intrastate fresh pursuit from a reservation, at least one case involved interstate pursuit by tribal officers. In *State v. Cuny*, 595 N.W.2d 899 (Neb. 1999), the Nebraska Supreme Court held that tribal officers from the Pine Ridge Indian Reservation located in South Dakota had no common-law or statutory authority in Nebraska to arrest a drunk driver for a misdemeanor. The court did not rest its reasoning on the officer's tribal status, but that Nebraska law only permits out-of-state officers to pursue those suspected of committing a felony. *Id.* at 903.

140. COLO. REV. STAT. § 16-3-106 (2018); N.C. GEN. STAT. § 1E-12 (2018); WASH. REV. CODE § 10.93.070(6) (2018); WIS. STAT. § 175.40(2) (2018); *State v. Nelson*, 90 P.3d 206, 210 (Ariz. Ct. App. 2004); *State v. Greer*, 761 So. 2d 343, 344 (Fla. Dist. Ct. App. 1999); *State v. Kurtz*, 249 P.3d 1271, 1280 (Or. 2011); Iowa Att'y Gen. Op. No. 06-9-1 (Sept. 19, 2006).

141. MINN. STAT. § 626.93 (2018); N.M. STAT. ANN. § 29-1-11 (2018); *Cornelius v. Kansas Dep't of Revenue Div. of Motor Vehicles*, 180 P.3d 579, 341 (Kan. Ct. App. 2008); *Young v. Neth*, 637 N.W.2d 884, 890 (Neb. 2002); Idaho Att'y Gen. Op. No. 95-4 (Oct. 13, 1995) (tribal warrants and deputization are required for tribal officers to arrest tribal members off-reservation).

142. NEV. REV. STAT. § 171.1255 (2018).

143. *State v. Littlewind*, 417 N.W.2d 361, 363 (N.D. 1987); see also *Eriksen III*, 259 P.3d 1079, 1084 (Wash. 2011) (Alexander, J., dissenting).

144. *United States v. Medearis*, 236 F. Supp. 2d 977, 982 (D.S.D. 2002).

Something noticeably missing from almost every fresh pursuit case is the offended governments. When it is the state police entering the reservation, the argument defending tribal sovereignty is left to the, often non-Indian, criminal defendants, who are subject to the state's criminal jurisdiction for off-reservation crimes.<sup>145</sup> Similarly, two tribal court cases uphold the off-reservation arrests of tribal members for offenses occurring within Indian Country, but in neither case was the state a party to argue that its sovereignty had been violated.<sup>146</sup> The situation is different in civil cases, where tribes can defend their sovereignty if the trespass by state police rises to the level of being "catastrophic for tribal self-government"<sup>147</sup> that threatens the "political integrity" of the tribe.<sup>148</sup>

There are a number of solutions available. Consistent with the general principle that states can pursue suspects that are subject to their jurisdiction, Congress could grant such blanket authority to tribes, similar to the statute employed in Nevada.<sup>149</sup> Alternatively, tribal officers could be included in the Uniform Fresh Pursuit Act.<sup>150</sup> But within the current legal framework, tribes and states have the authority to enter cross-deputization agreements to reduce or eliminate the existing gaps in police coverage.

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145. See *Davis v. Dir.*, N.D. Dep't of Transp., 467 N.W.2d 420, 421 (N.D. 1991) ("the Tribe has made no appearance," but court held state police did not have authority on reservation to request Indian arrestee take chemical test off-reservation); cf. *State v. Schmuck*, 850 P.2d 1332, 1333 (Wash. 1993) (amicus curiae in support of the State on behalf of the Suquamish Indian Tribe). *But see State v. Harrison*, 2010-NMSC-038, ¶ 26, 148 N.M. 500, 238 P.3d 869 (N.M. 2010) (amicus curiae for Pueblo of Santa Ana in support of Indian defendant).

146. See *Temoak v. Temoak Tribe of Western Shoshone*, No. ITCN/AC. CR. 03-004, 2003 WL 25856875, at \*4–5 (Nev. Inter-Tribal Ct. App. Aug. 5, 2003) (upholding off-reservation arrest of tribal member for an offense occurring on reservation); *Fort McDowell Yavapai Nation v. Shenah*, No. CR-2004-061, 2005 WL 6183302, at \*1–2 (Ft. McDowell Yavapai June 1, 2005) (upholding off-reservation arrest of tribal member for an offense occurring on reservation); see also *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir. 2011) ("[B]ecause tribal courts are competent law-applying bodies, the tribal court's determination on its own jurisdiction is entitled to some deference.").

147. *Norton v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 862 F.3d 1236, 1241 (10th Cir. 2017) (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 341 (2008)).

148. See *Montana v. United States*, 450 U.S. 544, 566 (1981).

149. See *Naud*, *supra* note 130, at 1253 (arguing that "Congress should use its exclusive power to define inherent sovereign authority and statutorily recognize the right of tribal officers to protect safety on their reservation through cross-jurisdictional fresh pursuit of non-Indians who break the law on tribal land").

150. See *Royster*, *supra* note 98, at app'x B (proposing a Tribal Fresh Pursuit Ordinance).

#### IV. CROSS-DEPUTIZATION AGREEMENTS

As one scholar notes, “[t]here is always some police force and court with jurisdiction to stop, arrest, and convict offenders, but the current framework creates a system in which the police who are most prevalent in the area are often not the ones with authority.”<sup>151</sup> In Indian Country it can be difficult to determine which agency has jurisdiction over whom and where.<sup>152</sup> Officers may hesitate because they believe the crime should be addressed by a different agency or make jurisdictional mistakes that cause a crime to go unpunished.<sup>153</sup>

Cross-deputization agreements are designed to eliminate the many uncertainties and difficulties tribal and state agencies face when attempting to determine jurisdiction and authority.<sup>154</sup> The agreements can be broad or cover only a narrow issue.<sup>155</sup> The practice of formal cross-deputization goes back to at least the 1960s.<sup>156</sup> The use of these agreements varies considerably, even within the same state. For example, while nine of Michigan’s ten tribes with police departments have cross-deputization agreements with state agencies,<sup>157</sup> only one of Montana’s seven tribes has an agreement.<sup>158</sup> Further, tribes are not always able to secure agreements with every neighboring state

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151. *Fresh Pursuit from Indian Country*, *supra* note 128, at 1708 n.35.

152. AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA 62 (2007) (asserting “some cases just fall through the cracks”).

153. *See, e.g., Davis v. Dir., N.D. Dep’t of Transp.*, 467 N.W.2d 420, 423 (N.D. 1991) (officer mistakenly thought he was on reservation, causing case to be dismissed).

154. *See Agreement for Cooperation and Cross-Deputization by and between the Osage Nation, Bureau of Indian Affairs, the State of Oklahoma, Osage County Oklahoma and Various Oklahoma Municipal Corporations*, ¶ 4 (June 30, 1999), <https://tinyurl.com/yd6d9tt4>.

155. *See Lower Brule Sioux Tribe v. South Dakota*, 917 F. Supp. 1434, 1439 n.3 (D.S.D. 1996), *aff’d*, 104 F.3d 1017 (8th Cir. 1997) (cross-deputization to enforce fish and game agreement).

156. *See Walks On Top v. United States*, 372 F.2d 422, 423–24 (9th Cir. 1967) (“[Officer] was an Indian officer whose employer was the United States through the Bureau of Indian Affairs. He had been joined on the reservation by Sheriff Baltz of Benewah County, Idaho, at a point on a road therein. Each officer was already ‘cross-deputized’ into the other’s service.”).

157. Hannah Bobee et al., *Criminal Jurisdiction in Indian Country: The Solution of Cross Deputization* 18 (Indigenous Law & Policy Ctr., Working Paper No. 2008-01); *see also* Matthew L.M. Fletcher et al., *Indian Country Law Enforcement and Cooperative Public Safety Agreements*, MICH. B.J., Feb. 2010, at 42 (edited version of “Criminal Jurisdiction in Indian Country”).

158. *See* U.S. DEP’T OF JUSTICE, DISTRICT OF MONTANA INDIAN COUNTRY LAW ENFORCEMENT INITIATIVE OPERATIONAL PLAN 1 (2018) (one reservation in the District of Montana – Fort Peck – has a cross-deputization agreement with neighboring Roosevelt County).

agency.<sup>159</sup> Tribes and states face many barriers when negotiating cross-deputization agreements, including whether they have the power to negotiate such agreements, as well as the liability of officers and the local politics involved in negotiations between elected representatives.

#### A. POWER TO ENTER INTO AGREEMENTS

The first major barrier to these agreements is determining whether the parties have the power to cross-deputize officers. Few courts question the power of tribes and local governments to enter into cross-deputization agreements. They either look only to the state or tribe's own enabling statutes,<sup>160</sup> or, when considering federal law, conclude that that which is not prohibited is allowed.<sup>161</sup> Many scholars similarly accept the power to enter into cross-deputization agreements.<sup>162</sup>

States and tribes sometimes give themselves permission to enter into cross-deputization agreements. Many states have statutes explicitly authorizing compacts,<sup>163</sup> although the majority of states appear to have no written or detailed statutory policy controlling intergovernmental agreements with

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159. See Bill Donovan, *Navajo Co. to Station Deputies in Kayenta, Piñon*, NAVAJO TIMES (Nov. 25, 2009), <http://www.navajotimes.com/news/2009/1109/112509deputies.php> (Navajo Nation has agreements with McKinley, Navajo, and Apache counties, but not Coconino or San Juan counties); see also Brian P. McClatchey, *The Tribal Law and Order Act of 2010: Toward Safe Tribal Communities*, 54 *ADVOC.* 24, 25 n.25 (2011) (“It doesn’t take advanced reasoning to know in which part of the reservation the non-Indian drug dealers, pedophiles, and domestic violence perpetrators reside.”).

160. *Vill. of Hobart v. Brown Cty.*, No. 2010AP561, 2011 WL 2535540, at \*1 (Wis. Ct. App. June 28, 2011) (reasoning the legislature intended to encourage law enforcement coordination between counties and tribes).

161. See *State v. Manypenny*, 662 N.W.2d 183, 187 (Minn. Ct. App. 2003), *aff’d*, 682 N.W.2d 143 (Minn. 2004) (“Public Law 280 does not prohibit cooperative agreements.”).

162. See, e.g., Angela R. Riley, *Indians and Guns*, 100 *GEO. L.J.* 1675, 1731 (2012) (“Often-times, tribal and state police enter into cross-deputization and intergovernmental agreements to ensure effective policing of Indian territory.”). But see Note, *Intergovernmental Compacts in Native American Law: Models for Expanded Usage*, 112 *HARV. L. REV.* 922, 924 (1999) [hereinafter *Intergovernmental Compacts in Native American Law*] (“Federal statutes and caselaw restrict the lawful authority of tribes and states to make binding agreements between themselves, and prohibit almost all tribal-state compacts absent approval by the Secretary of Interior.”).

163. See, e.g., ARIZ. REV. STAT. ANN. § 13-3874 (2018); CAL. PENAL CODE §§ 830.1, 830.6, 832.6 (West 2018); FLA. STAT. § 285.18 (2018); IDAHO CODE § 67-4002 (2018); MICH. COMP. LAWS § 28.609(6) (2018); MINN. STAT. § 626.93 (2018); MONT. CODE ANN. §§ 18-11-101 to -111 (2017); NEB. REV. STAT. §§ 13-1505 to -1509 (2018); N.M. STAT. ANN. § 29-1-11 (2004); S.C. CODE ANN. § 27-16-70 (2018); WIS. STAT. §§ 59.54(12), 165.90 (2018); Kan. Att’y Gen. Op. No. 99-28 (June 2, 1999); Neb. Att’y Gen. Op. No. 02009 (Mar. 26, 2002); Okla. Att’y Gen. Op. No. 97-66 (Dec. 17, 1997); Wash. Att’y Gen. Op. No. 18 (May 11, 1978).

tribes.<sup>164</sup> Some states even require agencies to enter into such agreements.<sup>165</sup> Scholars also point out that tribes “[u]sually need [a] tribal ordinance or resolution authorizing any grant of authority to outside law enforcement agents,”<sup>166</sup> and some agreements can even violate tribal constitutions.<sup>167</sup>

New Mexico’s state courts have found both statutory and common-law authority for the state to enter into cross-deputization agreements with tribes. This is seen in a New Mexico statute that specifically authorizes tribal police officers to act as state peace officers, but authority to enter commissions is held by the chief of the New Mexico state police.<sup>168</sup> In the 2005 case *State v. Martinez*,<sup>169</sup> a tribal officer was deputized by the local sheriff, not the chief of the state police. The court of appeals held that the statute in question did not govern deputization by a sheriff and cited no authority for the sheriff’s power to cross-deputize tribal officers.<sup>170</sup> The court then dismissed the case.<sup>171</sup> When the state court of appeals considered the issue in a later 2014 case, it cited a 2006 state statute and found that a sheriff could deputize any “respectable and orderly persons,” including tribal police officers.<sup>172</sup> Finally, in a 2015 case, the New Mexico Supreme Court held that “[s]heriffs retain that traditional authority, going back to the common law and early territorial days, to appoint deputies, including tribal police officers . . . .”<sup>173</sup> While several statutes now authorize the cross-deputization of tribal officers in New Mexico, the state’s courts will also find that the power exists inherently.

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164. *Intergovernmental Compacts in Native American Law*, *supra* note 162, at 926.

165. See S.C. CODE ANN. § 27-16-70 (2018); see also Alan D. Cohn, *Mutual Aid: Intergovernmental Agreements for Emergency Preparedness and Response*, 37 URB. LAW. 1, 51 n.160 (2005).

166. Paul Stenzel, *A Cooperative Approach to Law Enforcement on the Reservation*, 17TH ANNUAL MULTI-JURISDICTIONAL CONFERENCE ONEIDA INDIAN RESERVATION (Nov. 3, 2005), <http://www.paulstenzel.com/multi-j-110305.pdf>.

167. *Ute Tribal Judge Invalidates Cross-Deputization Agreement*, DESERET NEWS (Feb. 18, 1989, 12:00 AM), <https://www.deseretnews.com/article/35003/ute-tribal-judge-invalidates-cross-deputization-agreement.html> (agreement violated Ute Tribal Constitution).

168. See N.M. STAT. ANN. § 29-1-11 (2018).

169. 2005-NMCA-052, 137 N.M. 432, 112 P.3d 293.

170. *Martinez*, 2005-NMCA-052, ¶ 10; see also N.M. STAT. ANN. §§ 29-8-1 to -3 (2018) (New Mexico Mutual Aid Act authorizes law enforcement agencies to issue commissions through formal agreements with tribal entities); H.B. 793, 47th Leg., 1st Sess. (N.M. 2005) (amending the statute to clarify that it did not prevent a county sheriff from deputizing a tribal officer).

171. See *Martinez*, 2005-NMCA-052, ¶ 13.

172. See *State v. Sanchez*, 2014-NMCA-095, ¶ 7, 335 P.3d 253 (citing N.M. STAT. ANN. § 4-41-10 (2006)).

173. *Loya v. Gutierrez*, 2015-NMSC-017, ¶ 27, 350 P.3d 1155.

Whether required or not, tribes have some specific authority under federal law to enter into agreements with states.<sup>174</sup> In 1990, Congress passed the Indian Law Enforcement Reform Act “to clarify and strengthen the authority of the law enforcement personnel and functions within the [BIA].”<sup>175</sup> Under that Act, the Secretary of the Interior may charge BIA employees with a broad range of law enforcement powers, including contracting with a tribe to assist the BIA in enforcing tribal laws and, in connection with such a contract, authorize a tribal law enforcement officer “to perform any activity the Secretary may authorize under section 2803.”<sup>176</sup> BIA employees may, “when requested, assist . . . any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.”<sup>177</sup> In *Allender v. Scott*,<sup>178</sup> the U.S. District Court for the District of New Mexico found that a tribal police officer was “requested” to assist in the enforcement of state law by the New Mexico State Police when the county sheriff commissioned the tribal officer as a county deputy sheriff.<sup>179</sup> Finally, two of the purposes of the Tribal Law and Order Act of 2010 were “to increase coordination and communication among Federal, State, tribal, and local law enforcement agencies” and “to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country . . . .”<sup>180</sup>

Cross-deputization agreements give states and tribes the power to solve jurisdictional issues outside the courthouse. For forty years the Ute Indian Tribe and the state of Utah litigated a dispute over jurisdiction on the Uintah and Ouray Indian Reservation.<sup>181</sup> The repetitive cases went on so long that

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174. See, e.g., Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (1978); Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701–2721 (1988).

175. *United States v. Schrader*, 10 F.3d 1345, 1350 (8th Cir. 1993); see also 25 U.S.C. §§ 2801–09 (2012).

176. *Schrader*, 10 F.3d at 1350 (quoting 25 U.S.C. § 2804(a)).

177. 25 U.S.C. § 2803(8).

178. 379 F. Supp. 2d 1206 (D.N.M. 2005).

179. *Allender*, 379 F. Supp. 2d at 1215; see also *Hopland Band of Pomo Indians v. Norton*, 324 F. Supp. 2d 1067, 1077 (N.D. Cal. 2004) (Department of the Interior was required to enter into a contract with the tribe for law enforcement services, subject to a case-by-case assessment as to whether individual officers qualified for deputization).

180. Tribal Law and Order Act of 2010, 25 U.S.C. § 543 (2012).

181. See *Ute Indian Tribe v. Utah (Ute I)*, 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe v. Utah (Ute II)*, 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe v. Utah (Ute III)*, 773 F.2d 1087 (10th Cir. 1985) (en banc); *Hagen v. Utah*, 510 U.S. 399 (1994); *Ute Indian Tribe v. State of Utah (Ute IV)*, 114 F.3d 1513 (10th Cir. 1997), cert. denied, 522 U.S. 1107 (1998); *Ute Indian Tribe v. Utah (Ute V)*, 790 F.3d 1000 (10th Cir. 2015), cert. denied, 136 S. Ct. 1451 (2016); *Ute Indian Tribe v. Myton (Ute VI)*, 835 F.3d 1255 (10th Cir. 2016), cert. dismissed, 137 S. Ct. 2328 (2017).



then Judge Gorsuch finally called Utah’s claims “proven harassment,”<sup>182</sup> and at one point included “overtly racist and patently offensive” remarks by the assistant state attorney general.<sup>183</sup> Finally, in 2016, the Ute Indian Tribe and several Utah counties signed a Cooperative Agreement in Mutual Assistance in Law Enforcement.<sup>184</sup> Fascinatingly, the agreement included Uintah County and its new county sheriff, Vance Norton.<sup>185</sup> The same Vance Norton who is facing charges in Ute Tribal Court for pursuing and allegedly shooting Todd Murray also said “that one of his goals when he became Sheriff was to be able to work more cooperatively with the tribe.”<sup>186</sup> Sometimes even deadly enemies can put aside their differences and cooperate.<sup>187</sup>

## B. BARRIERS TO AGREEMENTS

While the nature of negotiated cross-deputization agreements allows for flexibility, it also requires cooperation between tribal and local governments. Tribal governments can be unwilling to limit their sovereignty or permit state police officers to patrol their reservations. Local governments might fear the ire of their citizens if they permit tribal police officers to respond to off-reservation crimes, especially if the tribal officers are not liable in state or federal court for their actions. All of these issues stem from general distrust and prejudice on both sides,<sup>188</sup> but the biggest barriers can be narrowed down to the liability and immunity issue and the influence of local politics.

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182. *Ute V*, 790 F.3d at 1008. Judge Gorsuch said the purpose of the case was to remind the State that it “must accept—or, if need be . . . made to respect,” the court’s judgments. *Id.* at 1003.

183. Geoff Liesik, *Assistant A.G. Made ‘Overtly Racist’ Statements, Ute Tribe Leader Says*, KSL (Oct. 9th, 2014, 10:38 AM), <https://www.ksl.com/index.php?nid=148&sid=31880820&comments=true>.

184. Liberty Best, *Cooperative Agreements are Signed by State, Counties, Tribe*, UB MEDIA (June 15, 2016), [http://www.ubmedia.biz/vernal/news/article\\_2a4b77aa-3316-11e6-b110-4781a57b2573.html](http://www.ubmedia.biz/vernal/news/article_2a4b77aa-3316-11e6-b110-4781a57b2573.html).

185. Utah Public Agencies and the Ute Indian Tribe, *Cooperative Agreement in Mutual Assistance in Law Enforcement* (June 14, 2016) (on file with author).

186. Liberty Best, *supra* note 184.

187. *See United States v. Kagama*, 118 U.S. 375, 384 (1886) (“Because of the local ill feeling, the people of the states where [Indians] are found are often their deadliest enemies.”).

188. *See Bobee et al.*, *supra* note 157, at 13 (“Historically, tribal leaders have withheld law enforcement authority from County Deputy Sheriffs due to a lack of awareness of . . . tribal customs, culture and traditions, a lack of culturally relevant training courses, and a lack of expertise in the tribal court system.”).

### 1. *Officer Liability and Sovereign Immunity*

Both states and tribes possess sovereign immunity from lawsuits.<sup>189</sup> Tribal sovereign immunity can extend to tribal officials when they act in their official capacities and within the scope of their authority.<sup>190</sup> Most cross-deputization agreements require a limited waiver of tribal sovereign immunity.<sup>191</sup> One scholar even recommends that both the tribe and state should waive their sovereign immunity against one another to ensure the agreement's enforceability.<sup>192</sup> A waiver of immunity by a tribe must be express and not implied.<sup>193</sup> While some criticize cross-deputization agreements for increasing state jurisdictional encroachments upon reservations,<sup>194</sup> others fear that without a waiver of sovereign immunity, tribes could abuse their police powers.<sup>195</sup>

Federal law creates a maze of liability for officers depending on whether they are enforcing federal, state, or tribal law. A cross-deputized tribal police officer can be subject to a civil rights claim when acting under his or her state authority.<sup>196</sup> However, when enforcing federal law, tribal police are not “state

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189. *See* Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

190. Imperial Granite Co. v. Pala Band of Mission Indians, 940 F.2d 1269, 1271 (9th Cir. 1991). *But see* Lewis v. Clarke, 137 S. Ct. 1285, 1292 (2017) (tribal sovereign immunity does not extend to suits against a tribal employee acting in his individual capacity); Baugus v. Brunson, 890 F. Supp. 908 (E.D. Cal. 1995) (nontribal member employed by a tribe to provide security not a tribal official entitled to share in the tribe's sovereign immunity); Turner v. Martire, 99 Cal. Rptr. 2d 587, 588 (Cal. Ct. App. 2000) (tribal sovereign immunity does not extend to tribal law enforcement officers).

191. *See* Hester v. Redwood Cty., 885 F. Supp. 2d 934, 940 (D. Minn. 2012) (Lower Sioux Community passed a limited waiver of its sovereign immunity for suits arising from the acts of its police officers enforcing state law).

192. Joel H. Mack & Gwyn Goodson Timms, *Cooperative Agreements: Government-to-Government Relations to Foster Reservation Business Development*, 20 PEPP. L. REV. 1295, 1312 (1993).

193. *See* Lane v. Pena, 518 U.S. 187, 192 (1996) (“A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text . . . and will not be implied.”); *Martinez*, 436 U.S. at 58 (“It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed.”).

194. Steven Johnson, *Jurisdiction: Criminal Jurisdiction and Enforcement Problems on Indian Reservations in the Wake of Oliphant*, 7 AM. INDIAN L. REV. 291, 308–09 (1979); *see also* Carole Goldberg, *In Theory, In Practice: Judging State Jurisdiction in Indian Country*, 81 U. COLO. L. REV. 1027, 1064 (2010) (presenting empirical research indicating that tribal communities view state criminal justice as unfair and ineffective within Indian country).

195. *See* Jayme Fraser, *New State Law Expands Authority of Tribal Police, Fills Gaps in State Law Enforcement*, OREGONIAN (August 14, 2011), [http://www.oregonlive.com/politics/index.ssf/2011/08/new\\_state\\_law\\_expands\\_authorit.html](http://www.oregonlive.com/politics/index.ssf/2011/08/new_state_law_expands_authorit.html) (Polk County Sheriff argued against deputizing tribal officers because with sovereign immunity tribes could abuse their police powers and be untouchable by state law).

196. *Loya v. Gutierrez*, 2015-NMSC-017, ¶ 8, 350 P.3d 1155 (requiring the county to provide the officer with a legal defense, including costs and attorneys' fees); *see also* Clema v. Colombe,

actors” and are not subject to a suit under § 1983,<sup>197</sup> but are possibly liable under the Federal Tort Claims Act (“FTCA”).<sup>198</sup> When enforcing tribal law, officers cannot be held liable under § 1983, FTCA, or *Bivens*.<sup>199</sup>

Formal cross-deputization agreements allow for certainty over tribal officer liability.<sup>200</sup> But while a tribe may waive its immunity through a contract,<sup>201</sup> many tribes feel any waiver will erode their sovereignty.<sup>202</sup> The failed California-Tribal Justice Act of 2001 is one example. That bill, “which would give tribal police officers the same status as county and municipal law enforcement,” ran into issues regarding liability.<sup>203</sup> But the bill required “tribal law enforcement agencies that are not subject to the Federal Tort Claims Act [to] maintain a liability insurance policy of at least \$1,000,000.”<sup>204</sup> At the same time, the California State Sheriff’s Association opposed the cap limit.<sup>205</sup> After almost two years, the bill was shelved over the tribal sovereign immunity issue.<sup>206</sup>

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676 F. App’x 801, 803–804 (10th Cir. 2017) (finding cross-deputized tribal officer was public employee entitled to immunity under New Mexico Tort Claims Act); *cf.* 42 U.S.C. § 1983 (2012) (providing civil action for damages under federal law against any person acting under color of state law who violates the Constitution and laws of the United States).

197. *See* *Bordeaux v. Lynch*, 958 F. Supp. 77, 84 (N.D.N.Y. 1997) (cross-deputized local employee was no longer a state actor subject to suit under § 1983).

198. 5 U.S.C. § 3374(c)(2) (2012); *see also* *Cabazon Band of Mission Indians v. Smith*, 388 F.3d 691, 695–96 (9th Cir. 2004) (observing that tribal police officers commissioned by the BIA “are treated as federal employees under the [FTCA]”); *cf.* *LaVallie v. United States*, 396 F. Supp. 2d 1082, 1086 (D.N.D. 2005) (finding tribal officer not “federal law enforcement officer” within meaning of FTCA); *Vallo v. United States*, 298 F. Supp. 2d 1231, 1237–38 (D.N.M. 2003) (finding tribal detention officer not liable under FTCA); *Locke v. United States*, 215 F. Supp. 2d 1033, 1039 (D.S.D. 2002) (finding tribal police officer not liable under FTCA).

199. *Dry v. United States*, 235 F.3d 1249, 1258 (10th Cir. 2000); *Boney v. Valline*, 597 F. Supp. 2d 1167, 1181 (D. Nev. 2009) (holding tribal officer not liable under *Bivens* or FTCA for shooting tribal member); *D’Ambra v. Maikshilo*, No. GDTC-T-10-105-PMG, 2012 WL 12130619, at \*3 (Mohegan Gaming Disputes Trial Ct. June 19, 2012) (holding tribal officers immune from tort claims under tribal sovereign immunity); *see also* *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 389–91 (1971) (finding implied cause of action against federal government officials who have violated a constitutional right).

200. *See supra* note 154 (“All officers acting under authority of an Osage Nation Police Officer commission shall act under the protection of the Osage Nation, including said Nation’s sovereign immunity . . .”).

201. *Nenana Fuel Co. v. Native Vill. of Venetie*, 834 P.2d 1229, 1233 (Alaska 1992).

202. James May, *A California Odyssey: Senate Bill 911*, INDIAN COUNTRY TODAY (Oct. 30, 2001), <https://indiancountrymedianetwork.com/news/a-california-odyssey-senate-bill-911/>.

203. *Id.*

204. S.B. No. 911, 2001–2002 Reg. Sess. (Ca. 2001).

205. May, *supra* note 202.

206. Int’l Ass’n of Chiefs of Police, *Promising Practices for Improving Safety in Indian Country*, May 2006, at 26, <https://web.archive.org/web/20171106015326/http://www.theiacp.org/portals/0/pdfs/IndianCountryReport2006.pdf>.

## 2. Local Politics

One of the largest barriers to tribal cross-deputization agreements is the local politics and cultural tensions between tribes and local governments.<sup>207</sup> As one scholar noted, “one can attribute the infrequency of cross-deputization agreements to the suspicion and lack of trust that reportedly prevails between tribal police and surrounding law enforcement agencies.”<sup>208</sup> Other times opposition can come from misinformation about the scope of such agreements.<sup>209</sup> The issues can be exacerbated in PL 280 states where tribes are subject to the state’s criminal jurisdiction.<sup>210</sup>

Cross-deputization agreements are the product of complicated negotiations between tribal and state elected officials who are subject to the demands of their constituents.<sup>211</sup> Agreements can fall apart if an elected county sheriff refuses to cooperate with tribal police.<sup>212</sup> Tribal officials are also elected and

207. See, e.g., Betsy Z. Russell, *Federal Officials Giving Tribal Police More Authority*, SPOKESMAN-REV. (Sept. 5, 2011), <http://www.spokesman.com/stories/2011/sep/05/bridging-the-gap/> (“Coeur d’Alene Tribe had a cross-deputization agreement with . . . Benewah County [Idaho] until the sheriff there revoked it in October 2007. Relations between the county and the tribe deteriorated further in July 2008 after tribal police marine officers pulled over Benewah County Commission Chairman Jack Buell and his wife, Eleanor, for violating a no-wake zone on Lake Coeur d’Alene. A confrontation ensued in which Buell and his wife vociferously questioned the tribal officers’ authority, according to police reports, asking questions such as, ‘Do you Indians know where you are?’ Eleanor Buell was accused of striking one of the officers.”); Betsy Z. Russell, *Prosecutor Riles Lawmaker by Referring to Idaho Tribes as ‘Foreign Government’*, SPOKESMAN-REV. (March 11, 2010, 4:05 PM), <http://www.spokesman.com/blogs/boise/2010/mar/11/prosecutor-riles-lawmaker-referring-idaho-tribes-foreign-government/> (speaking against cross-deputization bill, the county prosecutor was criticized for saying, “Yielding to a foreign government - I have a problem with that.”).

208. EILEEN LUNA-FIREBAUGH, *TRIBAL POLICING: ASSERTING SOVEREIGNTY, SEEKING JUSTICE* 41 (2007).

209. See Russell, *supra* note 207 (opposing H.B. 500, county prosecutor said the bill would only confuse the public because tickets written by tribal officers would land non-Indians in tribal courts). *But see* H.B. 500, 60th Leg., 2d Reg. Sess. (Idaho 2010) (all arrests and tickets by tribal officers would be required to be processed in state courts).

210. See Helen Christophi, *Ninth Circuit Sides With Paiute Tribe in Dispute With Inyo County*, COURTHOUSE NEWS (July 20, 2017), <https://www.courthousenews.com/ninth-circuit-sides-paiute-tribe-dispute-inyo-county/> (in dispute with Bishop Paiute Tribe, “Inyo County [California] says tribal police have no authority to enforce state or federal laws on or off tribal land”); Kelly Smith, *Calling It ‘Public Safety Crisis,’ Gov. Dayton Orders End to County-Tribal Dispute*, STAR TRIB. (Oct. 7, 2017, 7:03 AM), <http://www.startribune.com/dayton-orders-mille-lacs-to-solve-county-tribal-dispute/449839413/> (fifteen-month dispute over deputization of tribal officers led to a seventy-five percent reduction in police coverage on the Mille Lacs Band Reservation in Minnesota).

211. See NAT’L SHERIFF’S ASS’N, *ELECTED OFFICE OF THE SHERIFF EXECUTIVE SUMMARY*, [https://www.sheriffs.org/sites/default/files/tb/The\\_Elected\\_Office\\_of\\_Sheriff\\_-\\_An\\_Executive\\_Summary.pdf](https://www.sheriffs.org/sites/default/files/tb/The_Elected_Office_of_Sheriff_-_An_Executive_Summary.pdf) (forty-six states elect their local county sheriffs).

212. See *Smith v. Parker*, 996 F. Supp. 2d 815, 833 (D. Neb.), *aff’d*, 774 F.3d 1166 (8th Cir. 2014), *aff’d sub nom. Nebraska v. Parker*, 136 S. Ct. 1072 (2016) (“Thurston County refused to join any cross-deputization efforts despite the willingness of the Nebraska State Patrol to participate in

must respond to their constituents' fears that increased state authority will gradually erode tribal sovereignty.<sup>213</sup> Even if an agreement is reached, newly elected officials could refuse to honor past agreements, requiring new negotiations.<sup>214</sup>

Many scholars recommend that tribal cross-deputization agreements be with the state rather than localities.<sup>215</sup> This solution avoids the resistance that can perhaps come from local elected sheriffs.<sup>216</sup> While statewide agreements and statutes can “ensure that tribal authority is insulated against an individual sheriff’s distrust or dislike of tribal officials,”<sup>217</sup> they require navigating a potentially hostile political process, as demonstrated by the failure of S.B. 911 in California and H.B. 500 in Idaho.<sup>218</sup> Therefore, it seems that the most practical solution is the local one.

## V. CONCLUSION

Indians tribes have the right to be secure in their own reservations—to enforce their own laws, expel trespassers, and lend a helping hand to assist their neighboring state governments. What they need is the power for their

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such an agreement” with the Omaha Indian Nation); Michele Linck, *Thurston County Sheriff Is Now Policing Walthill*, SIOUX CITY J. (June 3, 2006), [http://siouxcityjournal.com/news/state-and-regional/thurston-county-sheriff-is-now-policing-walthill/article\\_dc55e3ae-bf0b-5d2e-ab43-0984ca1dcaaf.html](http://siouxcityjournal.com/news/state-and-regional/thurston-county-sheriff-is-now-policing-walthill/article_dc55e3ae-bf0b-5d2e-ab43-0984ca1dcaaf.html) (Sheriff “called the jurisdictional issues of the reservations ridiculous.”).

213. See Ian Macdougall, *Should Indian Reservations Give Local Cops Authority on Their Land?*, ATLANTIC (July 19, 2017), <https://www.theatlantic.com/politics/archive/2017/07/police-pine-ridge-indian-reservation/534072/>.

214. Dorothy Ballard, *Sheriff Seeks to Revive Cross-Deputation With Tribes*, MIAMI NEWS-REC. (Mar. 14, 2017, 8:30 AM), <http://www.miamiok.com/news/20170314/sheriff-seeks-to-revive-cross-deputation-with-tribes> (newly elected Ottawa County Sheriff attempting to revive agreement suspended by previous county sheriff).

215. Bobee et al., *supra* note 157, at 23; Fletcher et al., *supra* note 157, at 44; *Fresh Pursuit from Indian Country*, *supra* note 128, at 1696–97 (“On the one hand, statewide agreements are unlimited in duration, wider in reach, and less susceptible to the whims of local politics. On the other hand, agreements between states and tribes are often complicated or even blocked by longstanding animosity between the governments and statewide hostility from non-Indians.”).

216. See Linck, *supra* note 212.

217. Fletcher et al., *supra* note 157, at 44.

218. In 2011, the Coeur d’Alene tribe ended its five-year dispute with Benewah County, Idaho. After the tribe lost its cross-deputization agreement, it introduced H.B. 500 at the Idaho legislature, which would have given tribal officers the same authority as state police officers. Facing heavy opposition to the bill from prosecutors and the Idaho Sheriff’s Association, Benewah County eventually entered into a new agreement with the tribe, which then withdrew the bill. However, the county reneged on the agreement, leading the tribe to reintroduce the bill, again with heavy opposition. Russell, *supra* note 207. The bill failed by one vote. Russell, *supra* note 93. Finally, the county signed a new cross-deputization agreement in 2011, agreeing to deputize five tribal officers. Russell, *supra* note 207.

police to enforce state laws, to be able to pursue criminal suspects who attempt to escape justice by crossing an imaginary line in the road, and to occasionally allow state police officers to do the same. This can all be done if tribes and local governments agree to work with each other.

There are several incremental solutions that can be included in such agreements. Consistent with the general principle that states can pursue suspects that are subject to their jurisdiction, agreements should include two-way fresh-pursuit provisions, a police practice that goes back to common law. Tribal officers can be included in the Uniform Fresh Pursuit Act because states have Indian reservations that can stretch across multiple state borders. Even though the federal government is reducing its commitment to Indian Country, Congress could take action and increase tribal police authority.

High crime rates and few federal police resources have created a second-class system of justice in Indian Country.<sup>219</sup> While cooperation between tribal and local governments continues to increase, many states still do not provide tribal police with authority to enforce state laws on reservations—some of the most underpoliced areas in the country. Although tribes often struggle to adequately fund police departments, many tribal police have the guns, badges, and vehicles necessary to enforce the law; now they just need the power to do so.<sup>220</sup> Tribes and local governments do not need to wait on Congress or state legislatures to effect positive changes to policing on reservations – the current legal framework creates ample fertile ground for cooperation to close the gaps in police coverage. All that is needed is a bridge between two cultures that sometimes struggle to work together.

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219. Williams, *supra* note 17.

220. See Brandon Ecoffey, *County and Tribe to Work Together on Law Enforcement*, LAKOTA COUNTRY TIMES (Feb. 12, 2015), [http://www.lakotacountrytimes.com/news/2015-02-12/Headlines/County\\_and\\_tribe\\_to\\_work\\_together\\_on\\_Law\\_Enforceme.html](http://www.lakotacountrytimes.com/news/2015-02-12/Headlines/County_and_tribe_to_work_together_on_Law_Enforceme.html) (“[T]he Oglala Sioux tribe operates on a desperately under funded budget that forces officers to not only work marathon shifts but also to do their jobs with minimal support due to officer shortages.”); cf. Deena Winter, *Mille Lacs Tribal Police Have Badges, Guns, and No Power*, CITY PAGES (Jan. 4, 2017), <http://www.citypages.com/news/mille-lacs-tribal-police-have-badges-guns-and-no-power/409587265>.