
Laws of the Confederated Salish and Kootenai Tribes, Codified

Revised: April 15, 2003

RENEWAL OF MEMORANDUM OF AGREEMENT

BETWEEN THE STATE OF MONTANA, FLATHEAD COUNTY, MISSOULA COUNTY, SANDERS COUNTY, CITY OF HOT SPRINGS, CITY OF RONAN, TOWN OF ST. IGNATIUS AND THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

WHEREAS, the 1993 Montana Legislature enacted Senate Bill 368, which provided for the partial withdrawal of the consent of the Confederated Salish and Kootenai Tribes of the Flathead Nation (Tribes) to Public Law 280 jurisdiction on the Flathead Reservation; and

WHEREAS, Senate Bill 368 is codified in the Montana statutes at Mont. Code Ann. § 2-1-306 (1993) which provides that the Flathead Nation may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the State of Montana (State) and that within six (6) months after receipt of a tribal resolution withdrawing tribal consent, the Governor shall issue a proclamation to that effect; and

WHEREAS, the Tribes, the State, and affected county and local governments have a mutual desire to provide for a smooth implementation of tribal reassumption of exclusive jurisdiction over misdemeanor crimes committed by Indians; and

WHEREAS, the overriding purpose of this Memorandum of Agreement (Agreement) is to provide for timely and effective law enforcement and the protection of the public safety; and

WHEREAS, this Agreement is entered into pursuant to the State-Tribal Cooperative Agreements Act, codified at Mont. Code Ann. §§ 18-11-101 to -112 and Article VI, Section 1(c) of the Constitution of the Tribes approved by the Secretary of the Interior on October 28, 1935; and

WHEREAS, the Tribes, the State, and affected local governments shall act in good faith to effectuate the specific provisions of this Agreement; and

WHEREAS, the Tribe's resolution to withdraw from Public Law 280 includes language allowing continued state misdemeanor criminal jurisdiction in limited areas as specifically delineated in the body of the agreement;

NOW, THEREFORE, BE IT RESOLVED THAT THE FLATHEAD NATION AND THE STATE OF MONTANA, FLATHEAD COUNTY, MISSOULA COUNTY, SANDERS COUNTY, THE CITY OF HOT SPRINGS, THE CITY OF RONAN, AND THE TOWN OF ST. IGNATIUS ENTER INTO THIS MEMORANDUM OF AGREEMENT AS FOLLOWS:

I. LAW ENFORCEMENT

A. Dispatch Assessment of Incoming Calls

1. Exigent Circumstances

Upon receiving an incoming call, tribal, state, county, and city dispatch officers will dispatch the nearest officer to the scene of a crime where exigent circumstances do not allow for an assessment of whether the persons involved are Indian or non-Indian.

2. Assessment of Dispatch Calls

When an incoming call to dispatch is not an immediate exigent emergency, the dispatcher shall determine the:

- a. Nature of the call;
- b. Possible suspect/victims; and
- c. Location of the incident.

3. Referral to Appropriate Agencies

If the key parties to the incident are Indian, and it is not clear that the reported offense would be charged as a felony, state, county, or city dispatchers will relay the information directly to tribal dispatch. If the key parties to the incident are Indian and tribal dispatch receives the call, tribal dispatch will contact tribal officers. If the key parties are non-Indian and tribal dispatch receives the call, tribal dispatch will relay the information directly to the appropriate state, county, or city dispatch officer. In either situation, the person making the call will not be told to call the other jurisdiction. The dispatchers of the respective jurisdictions shall directly relay information to the appropriate dispatch office.

4. Unclear Assessment

If a clear assessment of the status of the key parties is not possible by dispatchers, direct law enforcement services will be provided by the jurisdiction receiving the call.

B. Officer Response to Dispatch Calls

1. Field Response to Dispatch Calls

Law enforcement officers dispatched into the field, either as the nearest officer available for exigent circumstances or as the appropriate officer due to the status of the persons involved, shall respond as immediately as possible. Once dispatched, officers shall attempt no assessment of proper jurisdiction until public safety is secured. If it is clear to the law enforcement officer that the offense committed will be charged as a felony, the officer will proceed pursuant to the authority of the jurisdiction represented. If it is unclear whether the offense will be charged as a felony or as a misdemeanor, the officer will

determine the status of the suspect involved.

2. Field Determination of "Indian"

Law enforcement officers will determine the Indian/non-Indian status of a suspect at the crime scene as soon as reasonable after providing any emergency law enforcement services and securing public safety. For purposes of the Agreement, an "Indian" is a person who is an enrolled member of a federally-recognized tribe. To make such determination, the suspect will be questioned as to whether she/he is an Indian.

a. Self-identification as Indian with proof of enrollment

If the suspect responds in the affirmative, the officer will obtain enrollment information and call the tribal dispatch officer, who will verify the enrollment status via contacting the specified Tribe's dispatch office and requesting an enrollment verification. If the suspect's Indian status is verified, the non-tribal officer will request tribal officer response, if necessary.

b. Self-identification as Indian without proof of enrollment

1. If the suspect claims to be an Indian to the non-tribal officer, but is unable to provide enrollment information, the suspect will properly be within the jurisdiction of the responding non-tribal officer until enrollment information is secured or until a successful defense of lack of jurisdiction is raised at trial.

2. If the suspect claims to be an Indian to a responding tribal officer, but is unable to provide verifying information, the suspect is properly within the jurisdiction of the Tribes unless a successful defense of lack of jurisdiction is raised at trial.

C. Traffic Stops

1. Non-Tribal Officer Stops

A non-tribal law enforcement officer may stop any vehicle upon a reasonable suspicion of criminal activity. The non-tribal officer may also conduct a protective frisk of the suspect and the area in the suspect's immediate control, whether the suspect is Indian or non-Indian, if the officer reasonably believes that the suspect may be armed with a weapon.

The non-tribal officer must then determine the Indian/non-Indian status of the suspect. If the suspect is Indian, as verified by the tribal dispatch, the officer may either issue a citation for the alleged violation pursuant to Section D or, if the officer determines that an arrest is necessary, request response by a tribal officer.

The non-tribal officer shall have authority to detain the Indian suspect pursuant to Section E: Unavailability of an Appropriate Officer.

2. Tribal Officer Traffic Stops

A tribal officer may stop any vehicle upon a reasonable suspicion of criminal activity. The tribal officer may also conduct a protective frisk of the suspect and the area in the suspect's immediate control, whether Indian or non-Indian, if the officer reasonably believes that the suspect may be armed with a weapon.

The tribal officer must then determine the Indian/non-Indian status of the suspect. If the suspect is non-Indian, the tribal officer may either issue a citation for the alleged violation pursuant to Section D or, if the officer determines that an arrest is necessary, request response by a non-tribal officer.

The tribal officer shall have authority to detain the suspect until the arrival of the non-tribal officer pursuant to Section E: Unavailability of an Appropriate Officer.

D. Citation Authority

1. Tribal Officers

Officers who have met tribal requirements for certification and who have been certified by the Tribes as law enforcement officers are hereby commissioned by each other party to this Agreement to exercise limited authority within those portions of the respective jurisdictions which lie within the exterior boundaries of the Flathead Indian Reservation. These tribal officers may exercise authority limited to that necessary for issuance of citations for violations of the state traffic laws and laws regarding minors in possession of alcohol. This authority includes that necessary to collect bond for the respective jurisdiction.

When a tribal officer makes a stop upon a reasonable suspicion of a criminal violation and determines: (1) that the suspect is a non-Indian; and (2) that an arrest is not necessary, the tribal officer is commissioned to act as an agent of the appropriate non-tribal jurisdiction and issue a citation for violation of state traffic laws and laws regarding minors in possession of alcohol.

2. Non-Tribal Officers

Officers who have met the necessary requirements for

certification as law enforcement officers of the respective state, county, and city jurisdictions and who have been certified by the respective jurisdiction, are hereby commissioned by the Tribes to exercise authority within the exterior boundaries of the Flathead Reservation. These non-tribal officers may exercise authority limited to that necessary for issuance of citations for violations of the tribal traffic ordinances and ordinances regarding minors in possession of alcohol. This authority includes that necessary to collect bond for the Tribes.

When a non-tribal officer makes a stop upon a reasonable suspicion of a violation and determines: (1) that the suspect is an Indian; and (2) that an arrest is not necessary, the non-tribal officer is commissioned to act as an agent of the Tribes and issue a citation for violation of tribal traffic ordinances and ordinances regarding minors in possession of alcohol.

3. Chain of Command

The chain of command for the law enforcement officers of the parties to this Agreement shall not be changed by the granting of authority to issue citations on behalf of a jurisdiction other than that of the officer. Officers will continue to report to and be accountable to superiors to whom they now report.

E. Unavailability of Appropriate Officer When Arrest Necessary

1. Stop by Non-Tribal Officer

If upon a request from a non-tribal officer, a tribal officer determines he is unable to respond to a traffic stop which necessitates an arrest of an Indian person for protection of public safety within thirty (30) minutes of the detention of the Indian suspect, the tribal officer may authorize the non-tribal officer to arrest and transport the suspect to the Tribal Law and Order facility. Such arrest and transport in a traffic-stop situation cannot occur without the express grant of authority from the tribal officer to the non-tribal officer pursuant to Section F. An arrest made with an express grant of authority from the tribal officer includes a grant of authority to completely process the suspect for the crime.

If the traffic stop of an Indian suspect by a non-tribal officer does not warrant the arrest of the suspect, the non-tribal officer may issue a citation for the alleged violation pursuant to Section D, or file a report of probable cause and report of traffic violation to the tribal prosecutor's office.

2. Stop by a Tribal Officer

If upon request from a tribal officer, the non-tribal officer determines he is unable to respond to a traffic stop which necessitates an arrest of a non-Indian within thirty (30) minutes of the detention of the non-Indian suspect, the non-tribal officer may authorize the tribal officer to arrest and transport the suspect to the county or city law enforcement facilities. Such

arrest and transport in a traffic-stop situation cannot occur without the express grant of authority from the non-tribal officer to the tribal officer pursuant to Section F. An arrest made with an express grant of authority from the non-tribal officer includes a grant of authority to completely process the suspect for the crime.

If the traffic stop of a non-Indian suspect by a tribal officer does not warrant the arrest of the suspect, the tribal officer may issue a citation for the alleged violation pursuant to Section D, or file a report of probable cause and report of traffic violation to the tribal prosecutor's office, who will then forward it to the appropriate prosecutor's office.

F. Arrest Authority

1. Arrest by Non-Tribal Officer of Tribal Suspect

A non-tribal officer may make an arrest of an Indian person only when granted authority to do so by a tribal officer after the tribal officer indicates he or she is unable to assure he or she can be at the scene within thirty (30) minutes of the detention of the Indian suspect, and:

- a. The non-tribal officer establishes to the tribal officer that probable cause for the arrest exists;
or
- b. When the crime by the Indian person is committed or being committed in the non-tribal officer's presence and an arrest is necessary to protect the public or preserve the evidence.

The tribal officer may verbally give the grant of arrest authority to the non-tribal officer.

2. Arrest by Tribal Officer of Non-Indian Suspect

A tribal officer may make an arrest of a non-Indian suspect only when granted authority to do so by a non-tribal officer after the non-tribal officer indicates he or she is unable to assure he or she can be at the scene within thirty (30) minutes of the detention of the non-Indian suspect, and:

- a. The tribal officer establishes to the non-tribal officer that probable cause for the arrest exists;
or
- b. When the crime by the non-Indian person is committed or being committed in the tribal officer's presence and an arrest is necessary to protect the public or preserve the evidence.

The non-tribal officer may verbally give the grant of arrest authority to the tribal officer.

G. Investigations

1. Unknown Suspect

a. When the suspect is unknown and exigent circumstances do not allow for an assessment of whether the persons involved in an incident are Indian or non-Indian, officers of the responding jurisdiction will stabilize the situation and take the lead in the necessary investigatory work.

b. When the suspect is unknown and it is determined that the victims are both Indian and non-Indian, the responding jurisdiction will lead the investigation with the cooperation of the other jurisdictions until the identity of the suspect is determined.

c. When the suspect is unknown and it is determined that the victim is Indian, the tribal officers will take the lead in the investigation until the identity of the suspect is determined.

d. When the suspect is unknown and it is determined that the victim is non-Indian, the non-tribal officers will take the lead in the investigation until the identity of the suspect is determined.

2. Known Suspect

a. When the suspect is known to be Indian, the tribal officers will take the lead in the investigation.

b. When the suspect is known to be non-Indian, non-tribal officers will take the lead in the investigation.

c. When there are multiple suspects known to be Indian and non-Indian, the respective jurisdictions will each conduct investigations in preparation for separate prosecutions. However, each jurisdiction will fully cooperate with the other jurisdiction in its investigation and will share investigatory information with the other jurisdictions.

3. Cost of Investigations

Each jurisdiction will cover the costs of investigations conducted by its officers.

H. Cooperative Meetings

1. Cooperation Between Local Law Enforcement Agencies

The parties agree to meet once a year throughout the term of this agreement, resources and personnel permitting, to discuss implementation issues, changes in law or process that impact this agreement, or other concerns arising from this agreement.

II. CRIMINAL PROCEEDINGS

A. Misdemeanors

1. All misdemeanor crimes committed by Indians shall be prosecuted in the Confederated Salish and Kootenai Tribal Court with the exception of those misdemeanor convictions resulting from a guilty plea entered in state court pursuant to a plea bargain agreement reducing a felony to a misdemeanor, or the result of a conviction in state court on a lesser included offense in a felony trial.

2. The State may retain jurisdiction of Indian persons for misdemeanor crimes in the limited circumstances that they result from a reduction of a felony offense due to a lesser included offense jury instruction at trial. If probation is a part of the sentence, it may be monitored by tribal probation personnel pursuant to agreement between the State and the Tribes.

3. The State may retain jurisdiction of Indian persons for misdemeanor crimes in the limited circumstance that they result from plea bargains which are negotiated before a trial verdict which reduce felony crimes to misdemeanors. If probation is a condition of the plea bargain, such probation may be monitored by tribal probation personnel pursuant to agreement between the State and the Tribes.

B. Concurrent Tribal/State Felony Jurisdiction

The Tribes continue to retain concurrent jurisdiction with the State over felony crimes committed by Indians, but may transfer prosecution of such crimes to the State. Factors the Tribes will consider when retaining jurisdiction over felony crimes include:

1. Seriousness of crime;
2. Age of defendant;
3. Criminal history of defendant;
4. Ties to the Reservation;
5. Family on Reservation;
6. Sentence upon conviction in state court versus actual jail time likely in tribal jail;
7. Prospect of rehabilitation; and
8. Access to appropriate services.

The State continues to retain jurisdiction, concurrent with that of the Tribe, over felony crimes committed by Indians, but may transfer prosecution of such crimes to the Tribes if warranted.

C. Transfer of Prosecution

1. Reduction From Felony to Misdemeanor Before Trial

When a crime is charged as a felony by the State, but prosecutorial discretion necessitates a reduction to a misdemeanor before trial, the State prosecutor will inform the tribal prosecutor. After providing adequate time for the tribal prosecutor to file the charging document in tribal court, the State will move to dismiss its action without prejudice.

2. Upgrade From Misdemeanor to Felony Before Trial

When a crime is charged as a misdemeanor in tribal court, but evidence necessitates an increase to a felony before trial and the tribal prosecutor determines that the case should be transferred to the State, the tribal prosecutor will inform the appropriate county attorney. After providing adequate time for the county attorney to file the charging document in state court, the tribal prosecutor will move to dismiss its action without prejudice.

D. Probation

1. Probation ordered for all tribal defendants in Tribal Court shall be monitored by tribal probation personnel.

2. Probation ordered for all tribal defendants who are convicted in a state district court for a felony offense shall remain under state jurisdiction, but may be supervised by tribal probation personnel pursuant to agreement between the State and the Tribes. Tribal probation personnel shall fulfill reporting requirements of state jurisdictions for purposes of revocation. Such revocations shall be within state jurisdiction when the conviction and ordered probation occurred within a state jurisdiction.

E. Testimony of Law Enforcement Officers at Trial

All non-tribal law enforcement officers shall abide by the subpoena power of tribal court jurisdiction, and all tribal law enforcement officers shall abide by the subpoena power of state, justice, or city court jurisdiction. Specifically, law enforcement officers agree to provide testimony in all jurisdictions as appropriate.

F. Communication Between Tribes and Local Agents

The tribal prosecutors and the state prosecutors shall meet bi-monthly for a period of six (6) months. At the end of the six-month period, the frequency of such meetings shall be reviewed. These meetings will allow an open exchange of information on pending cases to ensure that each jurisdiction is prosecuting cases appropriate for that jurisdiction in good faith. Communication with other jurisdictions shall be on a case-by-case basis.

III. GENERAL PROVISIONS

A. Jurisdiction of State Courts Entering Judgment Prior to Date of

Retrocession

Any state court issuing a judgment of conviction for a misdemeanor offense by an Indian prior to the effective date of retrocession will maintain jurisdiction over the case and the defendant, including jurisdiction to issue contempt orders, until the judgment of conviction is fully satisfied.

B. Public Access to Court Dockets

Court dockets of the courts of the respective jurisdictions will be open to the public.

C. Review of Process

Any party may request the Attorney General to convene additional meetings at any time during the term hereof, to discuss new developments or suggested improvements or changes to this agreement. The Attorney General will make every effort timely to accommodate such requests.

D. Effective Date and Term

The Agreement became effective upon execution by the parties in accordance with its terms, the Tribal Resolution and proclamation of the Governor of Montana. This renewal continues the agreement, as amended, for a term of eight years unless earlier terminated as herein provided. Prior to the expiration of this Agreement, or upon its termination, the parties may agree to the renewal of the Agreement for a term agreed upon by the parties. This clause does not affect the underlying jurisdiction of either party, which was altered by the legislation, the Governor's proclamation, and the Tribes' resolution in 1994, but only the cooperative law enforcement and prosecution aspects of this agreement.

E. Termination and Withdrawal

This Agreement may be terminated at any time upon written consent of all parties. Any party may withdraw from this Agreement provided said party gives notice of withdrawal to all other parties by certified mail at least 120 days prior to such withdrawal.

F. Amendments

This Agreement may be amended at any time provided said amendments are in writing and signed by all parties to the Agreement.

G. Negative Declaration

Nothing in this Agreement shall be deemed as a concession by any party as to any other party's jurisdictional claims or an admission of the same, or a waiver of the right to challenge such claims upon termination of the Agreement. Nothing in this Agreement shall prejudice the right of any individual to challenge the regulatory or adjudicatory jurisdiction of either party. Neither this Agreement nor the activities of the parties pursuant to this Agreement shall be deemed as enlarging or diminishing the jurisdiction or authority of any of the parties within the Flathead Reservation.

H. Liability

Each party shall remain liable for the acts, errors, or omissions of their officers and employees acting under this Agreement to the same degree that they are currently liable. No party assumes liability for the acts, errors, or omissions of the officers and employees of the other parties.

The parties agree that upon mutual consent, represented by an executed addendum attached to this Agreement, the non-Tribal parties may, to the extent allowed under federal law, be treated as federal employees for purposes of liability under the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 et seq. Any such addendum shall become effective upon execution by the parties and the United States and be incorporated into this Agreement as if in the original, without the need for additional review or approval.

I. Notices

All notices and other communications required to be given hereunder by the Parties to this Agreement shall be deemed to have been duly given when delivered in person or posted by United States certified mail, return receipt requested, with postage prepaid, addressed as follows:

- | | |
|--|---|
| 1. If to the Tribes: | Chairman
Confederated Salish and Kootenai
Tribes
P.O. Box 278
Pablo, MT 59855 |
| 2. If to the State: | Attorney General of Montana
Department of Justice
PO Box 201401
Helena, MT 59620-1401 |
| 3. If to Flathead County: | Flathead County Commissioners
Flathead County Courthouse
920 South Main Street
Kalispell, MT 59901 |
| 4. If to Lake County:
(courtesy copies) | Lake County Commissioners
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860 |
| 5. If to Missoula County: | Missoula County Commissioners
Missoula County Courthouse
200 West Broadway
Missoula, MT 59802 |
| 6. If to Sanders County: | Sanders County Commissioners
Sanders County Courthouse
Thompson Falls, MT 59873 |
| 7. If to the City of Hot Springs: | Mayor
City of Hot Springs
City Hall
Hot Springs, MT 59845 |
| 8. If to the City of Ronan: | Mayor
City of Ronan
109 Second Avenue Southwest |

Ronan, MT 59864

9. If to the Town of St.
Ignatius:

Mayor
City of St. Ignatius
City Hall
St. Ignatius, MT 59865

SIGNATURE PAGE (DELETED)

CSKT Laws Codified

January 1, 2000

(Rev. 4-15-03)

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