

Enrolled
Senate Bill 731

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION
(at the request of Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes
of the Warm Springs Reservation)

CHAPTER

AN ACT

Relating to tribal police officers; amending ORS 181A.685 and 181A.775.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 181A.685 is amended to read:

181A.685. (1) A tribal police officer is eligible to act as an authorized tribal police officer if the officer:

[(1)] (a) Is acting within the scope of employment as a tribal police officer;

[(2)] (b) Is certified as a police officer under the provisions of ORS 181A.355 to 181A.670[.];

[(3)] (c) Is in compliance with any rules adopted by the Department of Public Safety Standards and Training under ORS 181A.680 to 181A.692; and

[(4)] (d) Is employed by a tribal government that:

[(a) *Is in compliance with the requirements of ORS 181A.355 to 181A.670 applicable to a law enforcement unit as defined in ORS 181A.355;*]

[(b)] (A) Is in compliance with ORS 181A.680 to 181A.692 and any rules adopted by the department under ORS 181A.680 to 181A.692;

[(c)] (B) Has submitted to the department the resolution and documents described in ORS 181A.690;

[(d)] (C) Has adopted a provision of tribal law:

[(A)] (i) That requires the tribal government to participate in, and be bound by, a deadly physical force plan approved under ORS 181A.775 to 181A.805, to the same extent that the county sheriff is required to participate in, and be bound by, the plan;

[(B)] (ii) That requires the tribal government to retain records related to the exercise of the authority granted to authorized tribal police officers under ORS 181A.680 to 181A.692 in a manner substantially similar to the manner in which the provisions of ORS 192.005 to 192.170 require the Department of State Police to retain public records;

[(C)] (iii) That provides members of the public with the right to inspect records of the tribal government related to the exercise of the authority granted to authorized tribal police officers under ORS 181A.680 to 181A.692 in a manner substantially similar to the manner in which the provisions of ORS 192.311 to 192.478 provide members of the public with the right to inspect public records of the Department of State Police;

[(D)] (iv) That requires the tribal government to preserve biological evidence in a manner substantially similar to ORS 133.705 to 133.717 when the biological evidence:

[(i)] (I) Is collected as part of a criminal investigation, conducted by an authorized tribal police officer, into a covered offense as defined in ORS 133.705; or

[(ii)] (II) Is otherwise in the possession of the tribal government and reasonably may be used to incriminate or exculpate any person for a covered offense as defined in ORS 133.705; and

[(E)] (v) That waives sovereign immunity, in a manner similar to the waiver expressed in ORS 30.260 to 30.300, as to tort claims asserted in the tribal government's court that arise from the conduct of an authorized tribal police officer. The waiver described in this [subparagraph] **sub-subparagraph**:

[(i)] (I) Must apply to the conduct of an authorized tribal police officer that occurs while the provision of tribal law is in effect;

[(ii)] (II) Must allow for recovery against the tribal government in an amount equal to or greater than the amounts described in ORS 30.260 to 30.300 that are applicable to a local public body;

[(iii)] (III) May require that the claim be asserted in accordance with any applicable tort claims procedures of the tribal government; and

[(iv)] (IV) May exclude claims that could be brought in federal court under the Federal Tort Claims Act; [and]

(D) When an authorized tribal officer separates from employment with the tribal government, provides the department with notification of the dates of hire and separation and the reason for separation from employment;

(E) Follows the rules and regulations of the department related to age, background checks, psychological examinations and physical, intellectual, emotional and moral fitness requirements adopted under ORS 181A.410 for all authorized tribal officers; and

[(e)] (F) Has adopted or is exempt from adopting, in accordance with this paragraph, a written pretrial discovery policy that describes how a tribal government and its authorized tribal police officers will assist the district attorney, in criminal prosecutions conducted in state court in which an authorized tribal police officer arrested or cited the defendant, in meeting the pretrial discovery obligations imposed on the state by ORS 135.805 to 135.873. The process for adopting, and determining whether a tribal government is exempt from adopting, a written pretrial discovery policy is as follows:

[(A)] (i) A tribal government may request in writing that the sheriff of a county with land that is contiguous to the land of the tribal government provide the tribal government with a copy of any written pretrial discovery policy adopted by the sheriff that describes how the sheriff's office assists the district attorney in meeting the pretrial discovery obligations imposed by ORS 135.805 to 135.873. Not later than 30 days after receiving the request, the sheriff shall provide the tribal government with a copy of the policy or notify the tribal government that the sheriff has not adopted the policy.

[(B)] (ii) If a tribal government fails to submit a written request to each sheriff of a county that is contiguous to the land of the tribal government or if each sheriff has adopted a written pretrial discovery policy described in [subparagraph (A) of this paragraph] **sub-subparagraph (i) of this subparagraph**, the tribal government shall, not later than 90 days after July 22, 2011, adopt a written pretrial discovery policy.

[(C)] (iii) A tribal government may create and adopt a written pretrial discovery policy or may adopt the written pretrial discovery policy adopted by the sheriff of a county with land that is contiguous to the land of the tribal government.

[(D)] (iv) If the sheriff of any county with land that is contiguous to the land of the tribal government has not, on the date the sheriff receives a request described in [subparagraph (A) of this paragraph] **sub-subparagraph (i) of this subparagraph**, adopted a written pretrial discovery policy, the tribal government is exempt from adopting a written pretrial discovery policy.

(2) This section does not regulate the conduct or activities of tribal police officers or tribal governments occurring in Indian country or on the land of a tribal government or

outside of Indian country or the land of a tribal government but within a tribe’s civil or criminal jurisdiction.

SECTION 2. ORS 181A.775 is amended to read:
181A.775. As used in ORS 181A.775 to 181A.805:

(1) “Employ,” when used in the context of the relationship between a law enforcement agency and a police officer, includes the assignment of law enforcement duties on a volunteer basis to a reserve officer.

(2) “Law enforcement agency” means the Department of State Police, the Department of Justice, a district attorney, a political subdivision of the State of Oregon, a municipal corporation of the State of Oregon, a tribal government and a university, that maintains a law enforcement unit as defined in ORS 181A.355 (12)(a)(A).

(3) “Police officer” means a person who is:

(a) A police officer or reserve officer as defined in ORS 181A.355; and

(b) Employed by a law enforcement agency to enforce the criminal laws of this state.

(4) “Tribal government” means a tribal government as defined in ORS 181A.680:

(a) With land that is contiguous to the county in which the deadly physical force planning authority is created; and

(b) That has adopted the provision of tribal law described in ORS 181A.685 [(4)(d)(A)] (1)(d)(C)(i).

Passed by Senate April 28, 2021

.....
Lori L. Brockert, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 9, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

.....
Shemia Fagan, Secretary of State