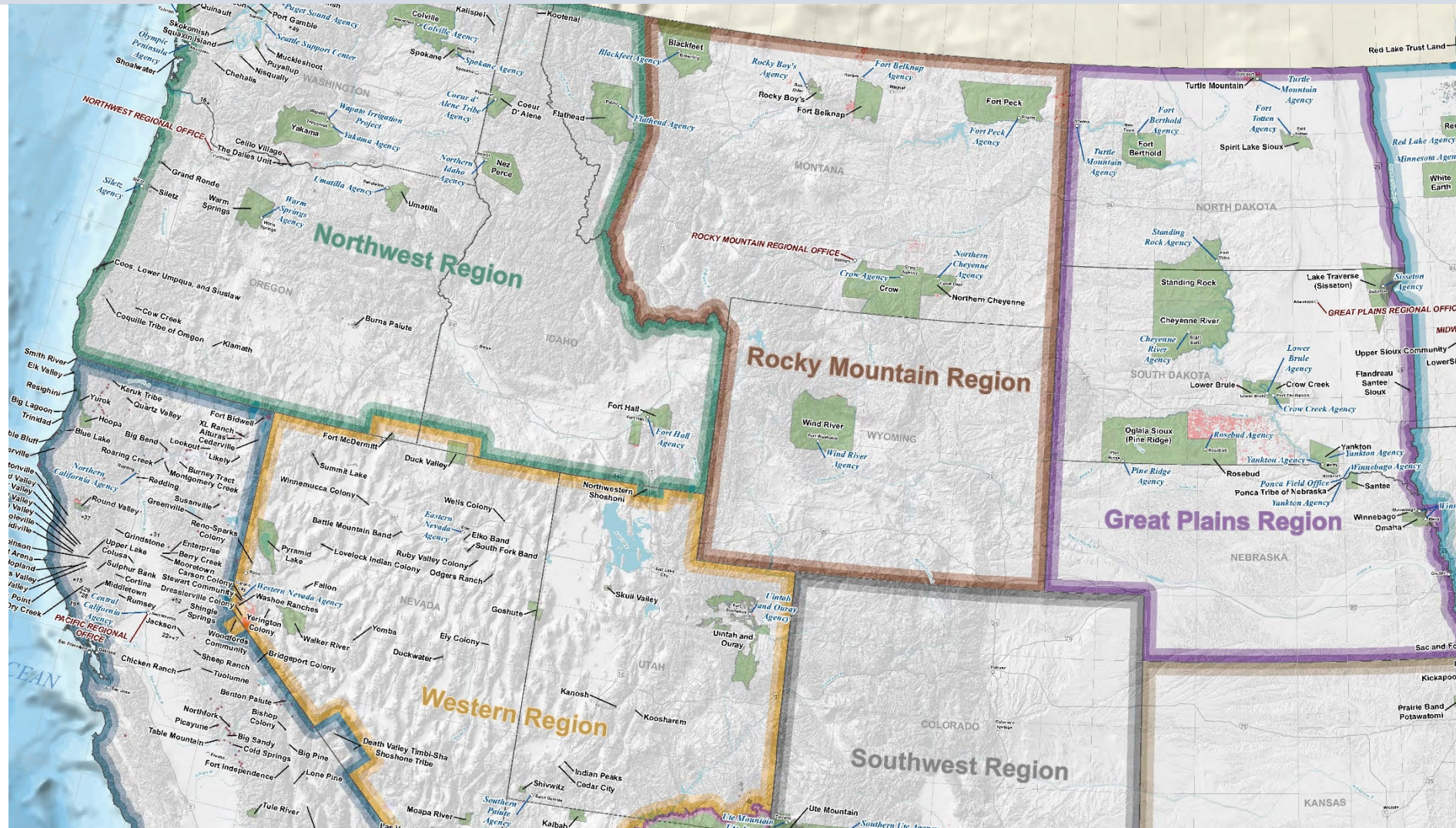


Enforcement of Traffic Laws in Indian Country

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Some Indian reservations in CWAG states



Many Indian reservations have state highways



Pyramid Lake Indian Reservation, NV
Nevada state routes 445, 446, 447



Colville Indian Reservation, WA
Washington state routes 97 (US 97), 17, 21, 155

18 U.S.C. § 1151

Definition of “Indian country”

§1151. Indian country defined

. . . . “Indian country”, as used in this chapter, means

- (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 . . . , and
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

States have traffic codes. So do many Indian tribes.

Objectives = Public safety; revenue (??)

Chapter 46.61

Title 46 RCW: Motor Vehicles

Revised Code of Washington

that it may remove vehicles that are traffic hazards from bridges and the mountain passes without prior authorization. If such a vehicle is removed, the department shall immediately notify the appropriate local law enforcement agency, and the vehicle shall be processed in accordance with RCW 46.55.110. [1989 c 111 § 18.]

Chapter 46.61 RCW
RULES OF THE ROAD

Sections

OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

Chapter refers to vehicles upon highways—Exceptions.

Reference to police officers, flaggers, or firefighters—Penalty.

Refusal to give information to or cooperate with officer—Penalty.

Duty to obey law enforcement officer—Authority of officer.

Failure to obey officer—Penalty.

Attempting to elude police vehicle—Defense—License revocation.

Persons riding animals or driving animal-driven vehicles.

Persons working on highway right-of-way—Exceptions.

Authorized emergency vehicles.

TRAFFIC SIGNS, SIGNALS, AND MARKINGS

Obedience to and required traffic control devices.

Traffic control signal legend.

Pedestrian control signals.

Flashing signals.

Lane-direction-control signals.

Special traffic control signals—Legend.

Display of unauthorized signs, signals, or markings.

Interference with official traffic-control devices or railroad signs or signals.

Traffic control signals or devices upon city streets forming part of state highways—Approval by department of transportation.

DRIVING ON RIGHT SIDE OF ROADWAY

OVERTAKING AND PASSING—USE OF ROADWAY

Keep right except when passing, etc.

Passing vehicles proceeding in opposite directions.

Overtaking on the left.

When overtaking on the right is permitted.

Limitations on overtaking on the left.

Further limitations on driving to left of center of roadway.

Pedestrians and bicyclists—Local duties.

No-passing zones.

One-way roadways and rotary traffic islands.

Driving on roadways lined for traffic.

Following too closely.

Driving on divided highways.

Restricted access.

Restrictions on limited-access highway—Use by bicyclists.

High occupancy vehicle lanes—Definition.

RIGHT-OF-WAY

Vehicle approaching intersection.

Nonfunctioning signal lights.

Bicycle, moped, or street legal motorcycle at intersection with inoperative vehicle detection device.

Vehicle turning left.

Vehicle entering stop or yield intersection.

Arterial highways designated—Stopping on entering.

DRIVING UNDER THE INFLUENCE

VEHICULAR HOMICIDE AND ASSAULT

Drivers to exercise care.

Pedestrians on roadways.

Pedestrians soliciting rides or business.

Driving through safety zone prohibited.

Sidewalks, crosswalks—Pedestrians, bicycles.

Pedestrians yield to emergency vehicles.

Pedestrians under the influence of alcohol or drugs.

Passing beyond bridge or grade crossing barrier prohibited.

Reporting of certain speed zone violations—Subsequent law enforcement investigation.

TURNING AND STARTING AND SIGNALS
ON STOPPING AND TURNING

Required position and method of turning at intersections.

"U" turns.

Starting parked vehicle.

When signals required—Improper use prohibited.

Signals by hand and arm or signal lamps.

Method of giving hand and arm signals.

SPECIAL STOPS REQUIRED

Approaching railroad grade crossings.

All vehicles must stop at certain railroad grade crossings.

Approaching railroad grade crossings—Specific vehicles—Exceptions—Definition.

Moving heavy equipment at railroad grade crossings—Notice of intended crossing.

Emerging from alley, driveway, or building.

Overtaking or meeting school bus, exceptions—Duties of bus driver—Penalty—Safety cameras.

School bus stop sign violators—Identification by vehicle owner.

School bus stop sign violators—Report by bus driver—Law enforcement investigation.

Overtaking or meeting private carrier bus—Duties of bus driver.

Rules for design, marking, and mode of operating school buses.

School patrol—Appointment—Authority—Finance—Insurance.

SPEED RESTRICTIONS

Basic rule and maximum limits.

Decreases by secretary of transportation.

Increases by secretary of transportation—Maximum speed limit for trucks—Auto stages—Signs and notices.

When local authorities may establish or alter maximum limits.

Private roads—Speed enforcement.

Minimum speed regulation—Passing slow moving vehicle.

Slow-moving vehicle to pull off roadway.

Slow-moving vehicle driving on shoulders, when.

Authority of secretary of transportation to fix speed limits on limited access facilities exclusive—Local regulations.

Local authorities to provide "stop" or "yield" signs at intersections with increased speed highways—Designated as arterials.

Maximum speed limit when passing school or playground crosswalks—Penalty, disposition of proceeds.

Due care required.

Maximum speed, weight, or size in traversing bridges, elevated structures, tunnels, underpasses—Posting limits.

Vehicles with solid or hollow cushion tires.

Special speed limitation on motor-driven cycle.

Exceeding speed limit evidence of reckless driving.

Speed traps defined, certain types permitted—Measured courses, speed measuring devices, timing from aircraft.

Determination of maximum speed on nonlimited access state highways within tribal reservation boundaries.

RECKLESS DRIVING, DRIVING UNDER THE INFLUENCE, VEHICULAR HOMICIDE AND ASSAULT

Electronic monitoring or alcohol abstinence monitoring.

2018-01-01

Washington State

COLVILLE TRIBAL LAW AND ORDER CODE CHAPTER 3-3 MOTOR VEHICLES	
STATE MOTOR VEHICLE LAWS INCORPORATED	
3-3-1	Provisions Incorporated The substantive provisions of the following parts of the Revised Code of Washington as presently constituted or hereafter amended are incorporated herein as provisions of this Code and shall apply to all persons subject to the jurisdiction of the Colville Tribal Court. RCW Chapters 46.04, 46.37, 46.44, 46.48, 46.61(except 46.61.688; 46.61.687), and RCW 46.20.015, 46.52.010, 46.52.020, 46.52.030, 46.52.035, 46.52.040 (Amended 8/25/11, Codified 8/3/11, Resolution 2011-570) (Amended 7/9/09, Resolution 2009-516)
3-3-2	Amendments Amendments, additions or deletions to or from such provisions by the State of Washington after the enactment of this Code shall become a part hereof for all purposes unless the Council by Chapter or resolution specifically provides otherwise.
3-3-3	Motor Vehicle Offenses It is unlawful for any person to operate, drive or move a motor vehicle on the roads of the Colville Indian Reservation in violation of any of the requirements of section 3-3-1 or to do any act forbidden or fail to perform any act required by section 3-3-1.
3-3-4	Driving Without a Valid Driver's License Any person, except those expressly exempted by statute, who shall drive any motor vehicle upon a public highway without a valid driver's license issued by the State of Washington under RCW Chapter 46.20 shall be guilty of Driving Without a Valid Driver's License.
3-3-5	Driving While License Suspended or Revoked Any person who drives a motor vehicle on any public highway at a time when his privilege to do so is suspended or revoked shall be guilty of Driving While License Suspended or Revoked.
3-3-6	Negligent Driving Any Indian who drives any vehicle in a negligent manner without due care and caution or in such a manner as to endanger or be likely to endanger any persons or property shall be guilty of Negligent Driving.
3-3-7	Negligent Driving Lesser Included Offense The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in, the offense of operating a vehicle in a reckless manner. (Amended 6/19/81, Resolution 1978-422)
3-3-8	Definitions As contained in the above-cited motor vehicle laws, "highways", "state highways" and "public highways" shall be construed to mean "all roads, public and private, within the jurisdiction of the Colville Confederated Tribes", and "county jail" or "jail" shall be construed to mean "tribal or other jail authorized by the Tribes to receive prisoners". Reference to any "court" shall be construed to mean the "Colville Tribal Court".
3-3-9	Inapplicable Provisions Any of the provisions or portions of the provisions of the Revised Code of Washington listed above which, by the incorporation herein, are
3-3-10	Maximum The maximum

Colville Tribes

Indians and non-Indians use these highways.
Who's in charge of policing them?



State authority over Indians in Indian country

- **Criminal:** No state jurisdiction over offenses committed by or against Indians in Indian country unless Congress says yes (e.g., PL 280). *Washington v. Yakima Nation*, 439 U.S. 463 (1979); *In re Denetclaw*, 320 P.2d 697 (Ariz. 1958) (DUI)
- **Civil:** No state enforcement of civil regulatory laws against Indians in their Tribe's Indian country unless Congress says yes. *California v. Cabazon Band*, 480 U.S. 202 (1987); *Colville Tribes v. Washington*, 938 F.2d 146 (9th Cir. 1991) (speeding).

State authority over non-Indians in Indian country

- **Criminal:** Full state jurisdiction over victimless offenses by non-Indians and non-Indian vs non-Indian offenses. *Draper v. United States*, 164 U.S. 240 (1886); *State v. Warner*, 379 P.2d 66 (N.M. 1963) (DUI)
- **Civil:** States can enforce civil regulatory laws against non-Indians and non-member Indians unless Congress preempts. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983); *State v. Davis*, 773 N.W.2d 66 (Minn. 2009) (speeding)

Tribal authority over Indians in Indian country

- **Criminal:** Tribes have jurisdiction over offenses committed by Indians. *U.S. v. Wheeler*, 435 U.S. 313 (1978); *Means v. Navajo Nation*, 432 F.3d 924 (9th Cir. 2005); 25 U.S.C. § 1301(2)
- **Civil:** Tribes can enforce civil regulatory laws against their members. *See Colville Tribes v. Washington*, 938 F.2d 146 (9th Cir. 1991) (traffic laws); *Akins v. Penobscot Nation*, 130 F.3d 482 (1st Cir. 1997)

Tribal authority over non-Indians in Indian country

- **Criminal:** No tribal jurisdiction over offenses by non-Indians unless Congress says yes. *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *U.S. v. Cooley*, 919 F.3d 1135 (9th Cir. 2019) (highway seizure)
- **Civil:** No tribal enforcement of civil regulatory laws against non-members unless Congress says yes or a *Montana* exception is present. *Montana v. U.S.*, 450 U.S. 544 (1981); *Skokomish Tribe v. Mosbarger*, 7 NICS App. 90 (Skokomish 2006) (speeding)

Montana exceptions = wiggle room for tribal authority?

Tribes can't regulate non-members unless

- (1) the regulation stems from a consensual relationship, or
- (2) regulation is necessary to prevent harm to the Tribe's political integrity, economic security, health, or welfare (PIESHW).

Montana v. United States, 450 U.S. 544 (1981)

How do the *Montana* exceptions apply to traffic enforcement?

- No consensual relationship formed when motorists enter reservation on state highway. *See Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Montana DOT v. King*, 191 F.3d 1108 (9th Cir. 1999).
- Careless driving, without more, does not meet the PIESHW test. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997).
- PIESHW test met where non-Indian was speeding in a school zone. *Skokomish Tribe v. Mosbarger*, 7 NICS App. 90 (Skokomish 2006)

CWAG States' policies re tribes citing non-Indians into tribal court for traffic infractions

- WA: Presumptively not okay, per 2006 informal AGO
- NM: Maybe okay? Compare *Loya v. Gutierrez*, 350 P.3d 1155 (N.M. 2015) with New Mexico AGO No. 92-07
- NV: Okay

Do tribal and state laws displace each other?

NO

- Non-Indians can be subject to both tribal and state civil laws. *See Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989) (tax).
- In PL 280 states, Indians can be subject to both tribal and state criminal laws. *See State v. Shale*, 345 P.3d 776 (Wash. 2015) (sex offender registration).

Limited or no* federal role in Indian country traffic law enforcement on state highways

- Major Crimes Act, 18 U.S.C. § 1153 (major felonies by Indians)
U.S. v. High Elk, 902 F.2d 660 (8th Cir. 1990) (manslaughter/vehicular homicide)
- Indian Country Crimes Act, 18 U.S.C. § 1152 (non-Indian vs Indian offenses, Indian vs non-Indian offenses)
U.S. v. McMillan, 820 F.2d 251 (8th Cir. 1987) (non-Indian vs Indian manslaughter/vehicular homicide)

* No federal role in mandatory PL 280 states/reservations

Within Indian Reservations--Summary

	State Law - Enforceable?		Tribal Law – Enforceable?	
Person Enforced Against	Non-member of Tribe	Tribal Member	Non-member of Tribe	Tribal Member
Civil regulatory laws	Yes unless Congress says no	No unless Congress says yes or exceptional circumstances	No unless Congress says yes or <u>Montana</u> exceptions	Yes
Criminal laws	Yes as to non-Indians unless victim is Indian w/o PL 280. No as to non-member Indians unless Congress says yes (e.g. PL 280)	No unless Congress says yes (e.g. PL 280)	No as to non-Indians unless Congress says yes (VAWA). Yes as to Indians who are members of other tribes.	Yes

Can tribal and state officers enforce each other's laws?

No, unless tribal and state law allow it and the requirements of both have been satisfied. *State v. Branham*, 102 P.3d 646 (N.M. 2004); Kansas AGO 94-152; *see* Oklahoma AGO 90-032

But, officers lacking a commission may stop and detain a suspected offender and deliver to proper authorities

- Tribal or BIA officer can stop suspected offender and detain non-Indian until state officer arrives. *Strate v. A-1 Contractors*, 520 U.S. 438, 456 n.11 (1997); *Colyer v. Wyoming DOT*, 203 P.3d 1104 (Wyo. 2009); *State v. Schmuck*, 850 P.2d 1332 (Wash. 1993)
- State officer can stop suspected offender and detain Indian until tribal officer arrives. *U.S. v. Patch*, 114 F.3d 131 (9th Cir. 1997)

Some CWAG states authorize tribal officers to enforce state law in Indian country

STATE	STATUTE	DESCRIPTION
AZ	ARS 13-3874	Tribal officers have full state law enforcement authority if certified by state police training board.
CA	Cal. Penal Code § 830.6	Tribal officers have full state law enforcement authority if deputized or appointed by county sheriff and trained at state police academy.
CO	CRS 16-2.5-106, -107	Tribal officers have full state law enforcement authority if certified by state police training board.
IA	Iowa Code §§ 80B.3, .11, .18	Tribal officers have full state law enforcement authority if certified through state police academy.
KS	KSA 22-2401a	Tribal officers have full state law enforcement authority if trained at state police academy, and if tribe maintains insurance and waives sovereign immunity.

Some CWAG states authorize tribal officers to enforce state law in Indian country (cont.)

STATE	STATUTE	DESCRIPTION
ND	ND Cent. Code § 12-63-02.2	Tribal officers have full state law enforcement authority if deputized by county sheriff or approved under state-tribal agreement and licensed by state police training board.
NE	Neb. Rev. Stat. § 81-1414(2)	Tribal officers have full state law enforcement authority if trained at state police academy or BIA police program.
NM	NMSA 29-1-11	Tribal officers have full state law enforcement authority if issued commissions by NM State Police under written agreement with tribe. Insurance and training at state police academy are required.
NV	NRS 171.1255 2019 Nev. Laws ch. 94 § 1	Tribal officers have state arrest authority (includes civil traffic citations). Tribal officers have full state law enforcement authority if certified by state police training commission.

Some CWAG states authorize tribal officers to enforce state law in Indian country (cont.)

STATE	STATUTE	DESCRIPTION
OK	Okla. Stat. §§ 21–99, 99a	Tribal officers have full state law enforcement authority if certified by state police training council & BIA–commissioned.
OR	ORS 181A.680 – 181A.692	Tribal officers have full state law enforcement authority if certified by state police training commission and if tribe meets detailed requirements re evidence, records, and insurance, and waives sovereign immunity in tribal court.
TX	Tex. Code Crim. Proc. Art. 2.126	Officers from specified tribes have full state law enforcement authority if they meet state certification standards and file a bond.
WA	RCW 10.92.020	Tribal officers have full state law enforcement authority if insurance, training, and state police certification requirements are met, and tribe has agreement with local jurisdiction.

May a state or local government be required to indemnify a tribal officer sued under 42 U.S.C. § 1983 for actions taken while enforcing state law?

- Yes. *Loya v. Gutierrez*, 350 P.3d 1155 (N.M. 2015)
- CWAG state laws that disclaim liability for actions of tribal officers = ARS 13-3874, KSA 22-2401a, ND Cent. Code § 12-63-02.2, ORS 181A.690, RCW 10.92.020
- State-certified tribal officer is not acting “under color of state law” under § 1983 when enforcing tribal law. *Pearson v. Director*, 2016 WL 3386798 (W.D. Wash. 2016)

Useful Law Review Articles

- Margo Hill & Christine Myers, *Creating a Culture of Traffic Safety on Reservation Roads: Tribal Law & Order Codes and Data-Driven Planning*, 3 INDIGENOUS PEOPLES' J. L., CULTURE & RESISTANCE 43 (2016)
<https://scholarship.org/uc/item/5mc9m5mt>
- Kevin Morrow, *Bridging the Jurisdictional Void: Cross-Deputization Agreements in Indian Country*, 94 N.D. L. REV. 635 (2019)
https://law.und.edu/_files/docs/ndlr/pdf/issues/94/1/94ndlr65.pdf