

**Prepared Statement
of the Honorable Dustin Klatush, Chairman
Confederated Tribes of the Chehalis Reservation**

Subcommittee on Indian and Insular Affairs

**Oversight Hearing on “Opportunities and Challenges for Improving Public Safety in
Tribal Communities”**

November 14, 2023

Thank you, Chair Hageman, Ranking Member Leger Fernandez, and members of the Committee for holding this oversight hearing. My name is Dustin Klatush, and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the “Tribe”). My testimony will focus on challenges that the Chehalis Tribe has experienced providing effective law enforcement services to our community, and provide some recommendations for the Committee to consider.

The Chehalis Reservation was created by Executive Order in 1864 and is located between the confluence of the Chehalis River and the Black River. Geographically, the Tribe is located approximately halfway between Seattle and Portland off Interstate 5. Large assemblages of the Tribe’s 5,500-acre reservation land base are checkerboarded and are situated throughout southwestern Washington state in three different counties. Approximately forty percent of Chehalis tribal members are under the age of 18.

I. RECRUITING AND RETAINING TRIBAL OFFICERS HAS NEVER BEEN MORE DIFFICULT

According to data published annually by the Washington Association of Sheriffs and Police Chiefs,¹ the state of Washington has the lowest number of law enforcement officers per 1,000 residents of any state in the United States. Washington’s average of 1.12 officers per 1,000 residents is below every other state and the District of Columbia. The national per capita average is 2.31 per 1,000 residents, so Washington state has less than half as many officers proportionately than the national average. The number of officers in Washington state has been decreasing despite aggressive recruitment efforts by local jurisdictions, such as increased pay and hiring bonuses.

The Tribe’s Police Department (PD) carries out law enforcement and detention services under a contract with the Bureau of Indian Affairs (BIA) under the *Indian Self-Determination and Education Assistance Act of 1975*. The Tribe’s PD has thirteen commissioned officers who are certified under state law to enforce state and local criminal laws, in addition to Chehalis tribal criminal laws. The PD currently has two vacant positions. Next year, the Tribe intends to add two new officer positions and hopes that it will be able to find suitable candidates to fill them.

Many Indian tribes have experienced recruiting and training law enforcement officers only to see them leave for more competitive pay and benefits in neighboring jurisdictions. The

¹ See *Crime in Washington 2022 Annual Report*, Washington Association of Sheriffs and Police Chiefs, available at <https://www.waspc.org/assets/CJIS/Crime%20in%20Washington%202022-compressed.pdf>. The statistics cited in this prepared statement were taken from this report.

Chehalis Tribe is no exception, and this problem has been aggravated by the shortage of officers statewide and the aggressive recruiting efforts of our neighboring jurisdictions.

There are other factors that the Tribe believes have contributed to the shortage of police officers, including a negative political climate in recent years toward law enforcement generally. We are seeing fewer young people who are interested in pursuing careers in law enforcement. Historically, the Tribe could rely on officers from neighboring jurisdictions who retired with pension benefits from their respective state and local departments to seek employment with the Tribe as tribal officers. Today, however, we are now seeing these individuals leaving the law enforcement profession altogether.

The decrease in the number of law enforcement officers in Washington state over the past five years has unfortunately corresponded with an increase in the number of assaults against police officers. In 2018, there were 1,676 reported assaults on law enforcement officers in the state. In 2022, there were 2,375 reported assaults against police officers, which represented a 20 percent increase over 2021. These statistics highlight the obvious: law enforcement is a critical, yet dangerous, profession in any community.

While the Tribe pays salaries commensurate with our neighbors, it is not able to provide the same retirement benefits that our neighboring jurisdictions can provide. State governments and municipalities can fund pension and more generous retirement benefits by collecting various types of real estate, income, and sales and excise taxes on individuals and businesses. Indian tribes, on the other hand, have a very limited ability to collect taxes—particularly from non-Indian businesses—because of the so-called “dual taxation” problem where federal courts have generally allowed state and local governments to impose and collect taxes on non-Indians in Indian country, even where a tribal tax applies. For tribes to impose tribal taxes under these circumstances means that non-Indian businesses will simply not do business on tribal lands because of the dual system of taxation.

The Tribe fully supports the *Parity for Tribal Law Enforcement Act* (H.R. 4524), a bipartisan bill introduced by Congressman Dan Newhouse that would allow tribal law enforcement officers to begin accruing the same retirement, injury, and death benefits that federal law enforcement officers currently enjoy. The Tribe has worked closely with the Department of the Interior on this bill and is confident that the bill will have a minimal impact on the federal budget. If enacted, H.R. 4524 will provide Indian tribes nationwide with a critical tool in addressing their law enforcement recruitment and retention challenges. The Tribe encourages the Committee to move this bill quickly.

II. FENTANYL AND ENFORCEMENT GAPS IN STATE LAW HAVE PUT AN INCREASED BURDEN ON TRIBAL LAW ENFORCEMENT IN WASHINGTON STATE

In 2021, the Washington Supreme Court struck down Washington state’s primary drug possession law as unconstitutional in a case called *State v. Blake*.² The state law that was invalidated by that decision had made possession of controlled substances a felony.

The Washington State Legislature responded to the *Blake* decision by enacting a law that made drug possession, including hard drugs like fentanyl, a *misdemeanor* with a requirement that offenders be diverted to treatment in lieu of arrest for at least the first two arrests. The

² *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021).

Legislature's response meant that, for practical purposes, law enforcement could not arrest individuals for possessing or using fentanyl or other hard drugs because the law enforcement agencies had no effective way of tracking whether a perpetrator had been offered services the requisite two times before an arrest was allowed.

This year, the Washington State Legislature amended the law again to remove the mandatory diversion requirements, but possession and public use of fentanyl or other hard drugs are still only misdemeanors. Further, the new law "encourages" law enforcement officers to divert offenders for treatment in lieu of jailing them. The new law went into effect this past summer and widespread confusion still exists among law enforcement in the state about what to do with drug possession offenders.

The state of Washington's evolving approach to drug possession has caused a ripple effect for tribal police departments, including the Tribe. Most arrests that the Tribe's officers make involve fentanyl possession. Fentanyl usage has surpassed heroin and methamphetamine usage on the Chehalis Reservation and in southwest Washington.

While the Tribe's neighboring jurisdictions are unable to arrest for drug possession crimes due to lax state laws, the U.S. Attorney's Office has other challenges. Federal law enforcement priorities vary with administrations and the current federal prosecution priorities for our U.S. Attorney's Office are human trafficking, sex crimes, and financial crimes. For drug cases in Indian country, federal prosecutors in our area want to see airtight cases with large amounts of drugs. Those cases represent just a small fraction of the fentanyl cases in our area, which renders the federal law enforcement response essentially a non-factor for the Tribe's purposes. Given the realities of state and federal law enforcement in our area, Chehalis and other tribes are often in the difficult position of having to fend for ourselves.

Indian tribes generally lack jurisdiction to prosecute non-Indians for violations of tribal law, including offenses related to drug possession and distribution. In 2013, Congress authorized Indian tribes to prosecute non-Indians for certain domestic violence offenses in Indian country and expanded that authority for related offenses when it reauthorized the *Violence Against Women Act* in 2022. Congress should consider providing similar authority for Indian tribes to arrest and prosecute non-Indians for possession and distribution of fentanyl and other hard drugs. Given the legal and political landscape in the state of Washington, this type of authority might be the only effective enforcement mechanism to get fentanyl-related perpetrators off the streets for tribes in our area.

The Tribe is mindful that law enforcement is only part of the solution to the fentanyl problem. On December 14, 2023, the Tribe will host the grand opening of its Hope and Healing Clinic, a facility that will provide inpatient and outpatient treatment for substance abuse, including opioids. The Clinic will provide medication-assisted treatment and behavioral health therapy and will be the only facility of its kind in the surrounding area. For state and local governments, siting these types of facilities has proven difficult because of opposition from residents, neighbors, and citizen groups. Tribes, on the other hand, can expedite construction on tribal lands using tribal zoning laws and regulations, which is what the Tribe did.

The Tribe also has a 38-foot mobile clinic that will be used to provide treatment at remote locations, as well as to transport patients to and from the Hope and Healing Clinic. The Tribe intends for the Hope and Healing Clinic to fill a critical void in our area by providing treatment options not only for the Tribe, but our non-Indian neighbors as well. Moving forward, the Tribe

urges the Committee to ensure that Indian tribes are included in larger federal initiatives and legislation that provide resources to governments to arrest and prosecute fentanyl-related offenders and to provide treatment options.

I thank the Committee for allowing me to provide testimony today and look forward to answering any questions.
