

**2014-2015 Dwight D. Eisenhower Transportation Fellowship  
Final Report**

**Traffic Safety Issues for Idaho Reservations and their Involvement in  
Idaho's Strategic Highway Safety Plan**

Jonelle Whitman

Eastern Washington University, Master's Urban & Regional Planning Student and  
Eisenhower Tribal Transportation Fellow, 2014-2015

Margo Hill, J.D. and Dick G. Winchell FAICP, PhD  
Faculty Advisors, Eastern Washington University

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# Traffic Safety Issues for Idaho Reservations and their Involvement in Idaho's Strategic Highway Safety Plan

## Abstract

Traffic safety on Indian Reservation roads and roads that traverse to and through Indian lands is an important issue that involves jurisdictional issues, policing, data collection and implementing the Four E's of highway safety: engineering, education, enforcement, and emergency response and policy, along with leadership. State Highway Safety Plans implemented by the Idaho Transportation Department is mandated to be a cooperative effort between federal, state, local, and private citizens that provide input into this plan, as well as tribal governments. Collaboration is not only key, it is required to include tribal governments for consultation for road safety and planning. Data collection of roadways and the supporting codes and enforcement also practices comprehensive planning for traffic safety. This study examines the limited efforts by the state to involve the tribes of Idaho in their traffic safety planning process, and to identify and address critical traffic safety issues and needs on and near reservations and throughout rural portions of the state. This research is based on an extensive literature review, surveys of key actors, and assessment of traffic safety data in Idaho.

*Keywords:* Indian Roads; Public Law 280; Strategic Highway Safety Planning; government-to-government relationships; jurisdiction; *IS-TEA*; *MAP 21*; *cross-deputization*

# Traffic Safety Issues for Idaho Reservations and their Involvement in Idaho's Strategic Highway Safety Plan

## 1.0 Introduction

*In 2013, while I was working during important tribal meeting during ballot counts the power went out in the City of Lapwai. It was raining that evening and a vehicle had wrecked into power pole south of town off Highway 95. Road conditions were already bad, due to a hard rain. My four year old daughter's best friend had died in that car accident. Contributing factors recorded in the news report included speed, rain, unbelted driver and passengers, and possible alcohol impairment. Most people I know can recount stories of their own accidents or loss of a loved one due to such an accident on or near our reservation. It was this recent tragedy that hit hard because our community lost a child, and my daughter, her best friend. Countless stories, tragedies within our close knit tribal communities, mean we all feel the impact.*

Elected tribal leaders and community leadership can identify where transportation affects those on the reservation in relation to police & enforcement, tribal codes, road engineering, and plans for improvement, emergency response, health, and planning, to work all these areas to coordinate with outside government agencies to improve safety and save lives. Indian reservation roads often include mixture of multitude of jurisdictions and districts of management where partnering to report, repair, and police proves to be difficult. Tribes must be able to harmonize with multitude of jurisdictions to ensure roadways are safe, partnerships include those with state, city, county and tribal roads of which makes reporting and identifying gaps in data collection and access to data.

According to National Highway Traffic Safety Administration report "American Indians die and are permanently disabled in motor-vehicle related injuries at rates two to three times greater than other Americans...some reservation rates are four to five times higher." Public safety issues and rates of crashes on Indian reservations are high as evident in data sources. Additional research and effort is needed to review tribal participation in state highways with developing tribal safety plans, of which includes tribes ensuring not only tribal roads but all roads are safe.

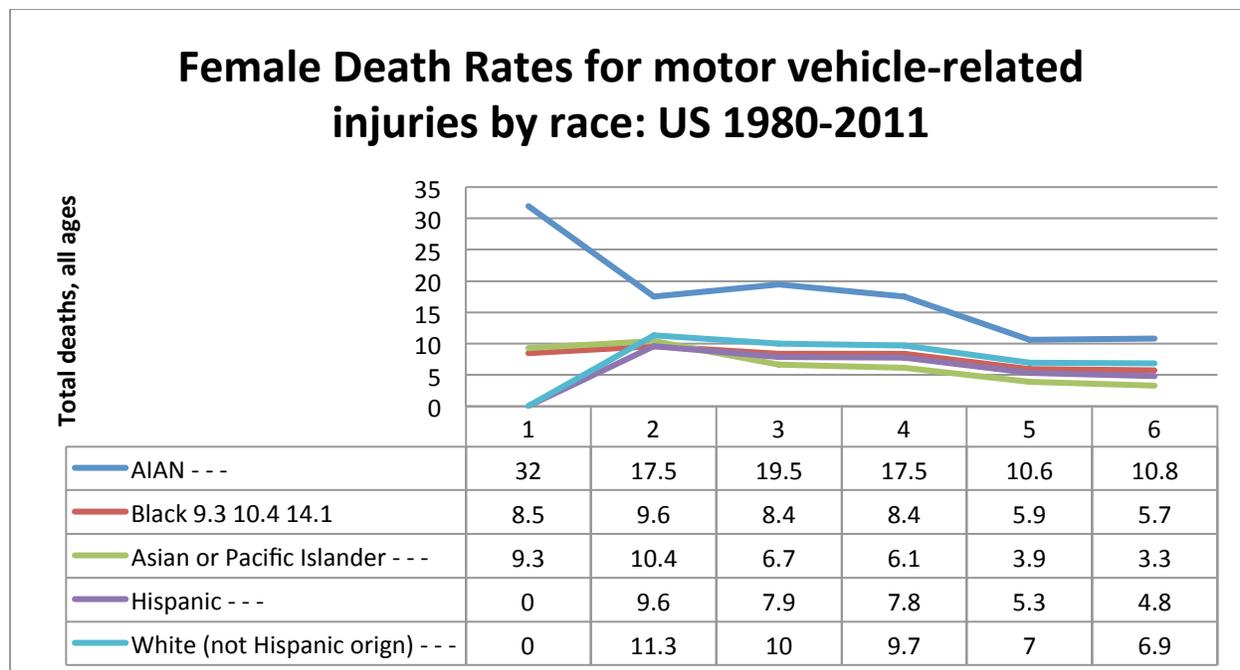
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The relationship between state and tribes in Idaho along with strained relationships with local counties and jurisdictional issues, leads to lack of tribal participation and input in transportation safety. Strategic Highway Safety Planning efforts require that is not completely followed by the state. The study has also identified active tribal participation, local jurisdictions, and state and counties relationships are needed for tribes to conduct traffic safety planning and decisions related to transportation, roadways, and safety actively and effectively.

### 1.1 Need for the study

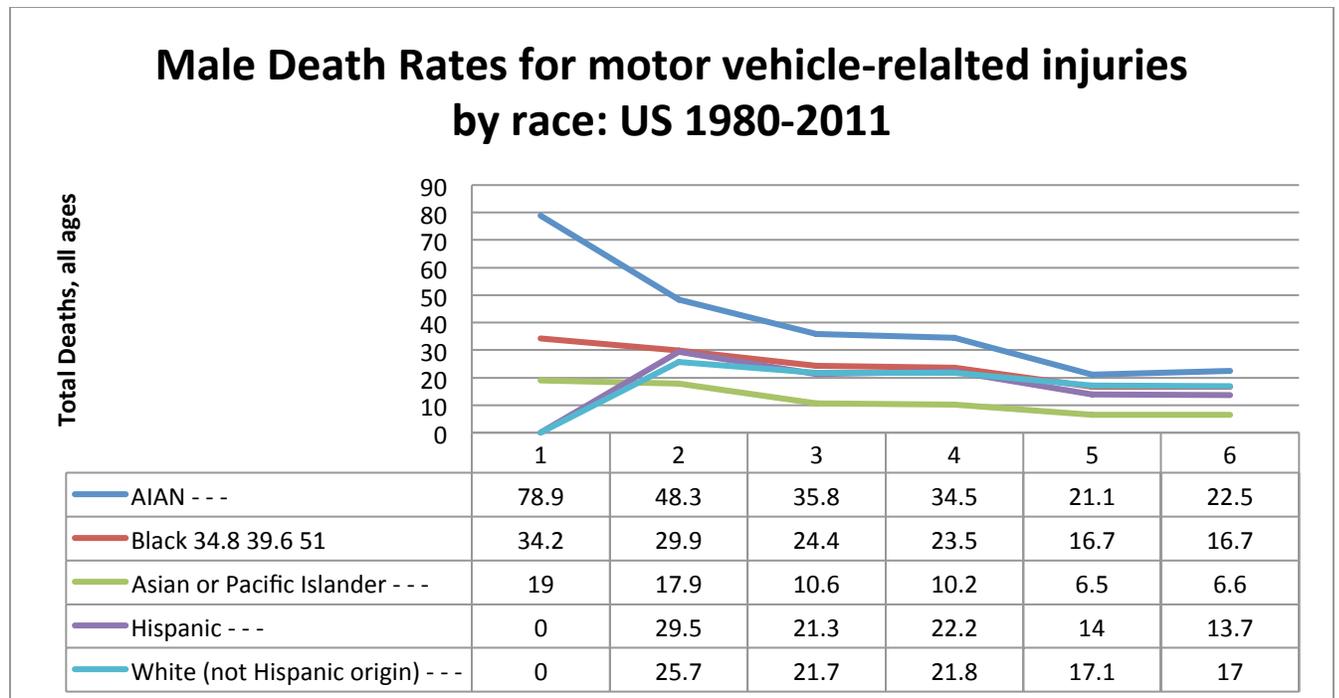
The issue of tribal transportation and equity of tribal input for roadways and safety is a national concern demonstrated by high rates of road fatalities and accidents for American Indian Alaskan Natives (AI/AN) and on or near reservations. The Center for Disease Control reports that motor vehicle crashes are a leading cause of unintentional injury for AI/AN ages 1 to 44. Adult motor vehicle-related death rates for AI/AN are 1.5 times more than that of whites and that of blacks. (CDC) AI/AN infants, less than one year of age experience 8 times the rate of motor-vehicle traffic deaths than that of non-Hispanic whites. The CDC notes that those who are most at risk are children and AI/AN Males.

The CDC had released data for total motor vehicle-related deaths by race, sex, age, and Hispanic origin for the United States from 1950-2011. In some instances data was not collected on races, with exception for Black/African Americans. However, with data demonstrated in tables shows that American Indian/Alaskan Native populations for both male and females are proportionally higher than other races. Selected years for table are years 1980, 1990, 2000, 2001, 2010, and 2011.



Source: CDC. Death Rates for motor vehicle-related injuries, by sex, race, Hispanic origin, and age: United States, selected years 1950-2011. **Error! Bookmark not defined.**

Starting in the 1980's AIAN female deaths in vehicle related deaths nearly 3-4 times higher than any other race, over the years rates had declined. However, given the sharp decline the death rates, the AIAN females are higher than any other race. Further review of CDC data shows that AIAN age with highest death rates in Female group are those 65 years and over with 10.2, followed by young drivers ages 15-24 with 3.7.



In 1980 data the AIAN males are astoundingly higher rate of death in motor vehicle-related deaths with 78.9. The rate of decline is rapid from 1980 to 1990 where 48.3 deaths given all ages. Latest data shows AIAN males at 22.5 deaths per 100,000 resident populations. In 2011 the highest segment per age are 25-34 year old males 34.8, followed by 15-24 males at 30.9, and males 45-64 years old at 27.4.

Accidents and fatalities seem too common on Indian reservations. Consideration of management of roads and planning between multitudes of jurisdictions can be difficult. Roads on reservations include state, county, city, local highway districts and tribal roads. Additional areas of concern are data collection, access, or use of data for tribal planning to reduce crashes on or near their reservations. There gaps in data collection, demographic information, collection by policing agencies, sharing of data and effective participation in Idaho Strategic Highway Safety Plan. This study revealed the need for further review to make process more comprehensive that promotes cooperation and communication between jurisdictions.

It is important that tribes and the state build relationships and communication with the goal to implement full participation. Strategic Highway Safety Plan “Toward Zero Death”

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requires the review of local laws, tribal codes, and cultural considerations to make changes to improve tribal transportation safety planning. Examples of inclusion of Tribes in SHSP planning and modeling can be found in the neighboring states of Montana and Washington Strategic Highway Safety Plans. Oregon includes some participation and invite tribal communities by hosting planning meetings on or near Indian reservations. Montana and Washington have taken it a step further with demonstration of formed relationships with tribes in regards to inclusion with planning efforts to improve roadways on Indian reservations and lands, data collection, and tribes having the ability to develop their own safety plans for reservation roads.

For example, Montana's SHSP specifically has chapter within their plan for "Native American Highway Traffic Safety Program." By coordination with tribes and data there are outlined strategies that address emphasis areas. Fatality Analysis Reporting System (FARS) data collection is from data collected from police accident reports where Washington and Montana are both participants. Inclusion and planning is found on the state transportation plan with emphasis on following data to establish projects to reduce issues related to SHSP and Tribal communities.

Review of requirements under the U.S. Department of Transportation Federal Highway Administration SHSP policy and legislation.

Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) requirements includes coordination with federally recognized tribes to include plans and programs such as State's Highway Safety Improvement Program (HSIP) and highway safety improvement projects like the Statewide Transportation Improvement Program (ITIP). MAP-21 also requires that state SHSP is to be developed after consultation with a broad range of stakeholders. (23 USC 148 (a) (12) Not only does this include federal, state, county, or traffic enforcement officials but federally recognized tribes and tribal stakeholders.

This report is funded by Dwight D. Eisenhower fellowship award with study related to tribal transportation issues. The Northwest TTAP office at Eastern Washington University and study of Washington Tribes along with review of partnerships that state

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of Washington has established with Tribes. Context for report is seeking information on State of Idaho SHSP and relationship with five tribes given time frame of the 2014-2015 school year. Research is also dependent on communication from entities willingness or having person available to participate and provide input on this report.

### 1.2 Problem Statement

Paving the way in history in the United States has historically been challenging for Native American tribes and communities. From first invasion with the doctrine of Manifest Destiny, rail ways and cessation of ancestral lands as treaties were signed between tribes and government. Federal agencies, such as Bureau of Indian Affairs that allowed resource extraction and access of roads and railways across tribal lands have navigated, paved, and established right-of-ways thru reservation territories to develop roads and laws that allowed states to cross jurisdictional boundaries. Tribes have proven in history and legal cases of mismanagement of tribal assets at the hand of federal agencies, including the strenuous relationship with states and local governments. This hasn't led to the relationship that would promote successful government to government relationships between tribes, federal government, and local surrounding communities and county governments who oversee local road districts.

Road safety and cooperation with state and local jurisdictions has proven to be problematic for the State of Idaho and Tribes with reservations in Idaho. The development of State Highway Safety Plans that include participation/consultation with Tribes including the review of how inclusion of tribes with planning and participating in State Highway Safety Planning is important to improve road safety and data collection. The issue of tribal transportation programs access to crash data on their roadways so they can establish Tribal Transportation Safety Plans that can be coordinated with ID SHSP with goals specific to each Tribe in Idaho that are each unique.

The purpose of this report is to assess if Tribes in state of Idaho collect crash data on their reservations, if data is used for Tribal Transportation Planning, and if they

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participate in Idaho's Strategic Highway Safety Plan.

Analysis of participation leads into the issue of jurisdiction, crash data for reservations, planning and coordination between entities. The issue that is constant is the concern for road safety and opportunities for cooperation like cross-deputization or agreements between local counties to help police on Indian reservations. Although Public Law 280 has been touted as the answer to safety and enforcement on reservations and roadways there remains a problem of meaningful and effective communication, partnerships, safety, and gaps in coverage on reservations. Tribal Law Enforcement officials overwhelmingly state that their hands are tied when applying laws of the road to those who are non-Indian on reservations. This report will review the tribal process of crash data collection, safety plans, tribal codes for traffic safety, and what issues are unique to their Tribal reservations on participation on road safety, and that the significance of crash disparities for AI/AN populations as well as federal law mandate cooperation.

### 1.3 Methodology.

One essential portion of this study is to establish if Tribes did actively participate in the Idaho Strategic Highway Safety Plan, and to see if and how crash data collection is gathered and used by tribes. Tribal participation is not only required, but is vital for rural areas and tribes to assist in planning and alignment of traffic safety priorities for roads on tribal reservations with development of Tribal Transportation Safety Plans and state and local government plans.. The need for safety and tribal collaboration on these roadways is vital to improve transportation on roadways that traverse over Indian reservations.

Reviewing the current Idaho SHSP and how coordination efforts between the Idaho SHSP Committee, namely the Idaho Transportation Department and how Tribes participate in the SHSP, and compare this with the surrounding states' SHSP efforts to include Tribes for SHSP input and partnerships. Primary source for guidance and

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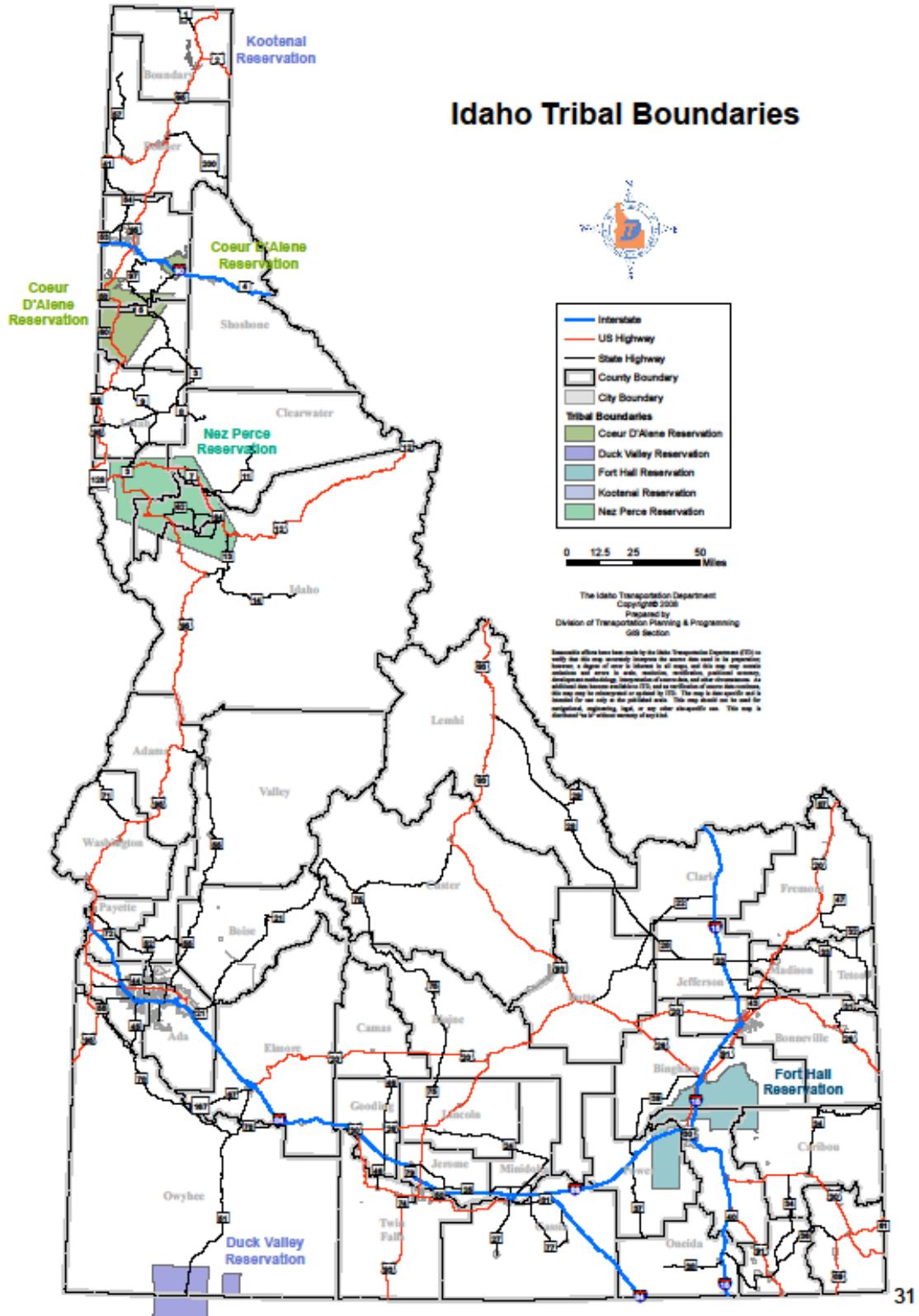
process for outlining data collection is the National Cooperative Highway Research Program Report 788: Guide for Effective Tribal Crash Reporting.

Qualitative narrative data from elicited informal interviews with number of contacts with respective five tribes in Idaho: Kootenai Tribe, Coeur d'Alene Tribe, Nez Perce Tribe, Shoshone-Bannock Tribe, and Shoshone-Paiute Tribe. Develop contact list for those individuals in planning offices, tribal law enforcement, transportation offices, and offices pertaining to law and order for tribal codes relating to transportation and safety. Develop questions and send letter of request to tribes with follow up phone call.

Contact Idaho Transportation Department coordinators for Idaho's Strategic Highway Safety Plan, Highway Safety Programs, and records for crash data request to review data collection for roadways on or near Indian reservations. Depending on data and information received to review areas of crash data collection and analysis of areas with high incidence of crashes. Areas included for planned improvements, education programs for driver behavior, governing laws and codes, infrastructure issues, and emergency response. View of tribal codes, state law, and how crash data can be used for tribal planning, policing, and discussion with State SHSP. The quantitative data includes crash data received from State of Idaho's Office of Highway Safety, however given time constraint I was not able to map data, as data is not specific to whether they are located on Indian reservations. However, data sent for three reservations are those that Office of Highway Safety considered to be on or near reservation boundaries.

Additional research includes understanding locating information on history between Tribes and state, laws pertaining to safety plans and safety on reservations, for example Public Law 280 and Idaho 2011 House Bill 111 regarding tribal policing and safety on reservations. Limitations to study include time to collect information or no response from individual agency for input on this topic. Crash data received Idaho Office of Highway Safety reporting for years of 2008-2012 is an estimated by reservation boundary. The other issue is how tribes collect and report data to the state. As reported only Shoshone-Bannock and Shoshone-Paiute are only tribes to report data to Idaho at this time.

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Idaho Transportation Department. Idaho Tribal Boundaries (with roads). Division of Transportation Planning & Programming GIS Section. 2008.

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### 2.0 The Idaho Traffic and Highway Safety Plan (SHSP)

The Idaho Transportation Department "Toward Zero Deaths – Every Life Counts" campaign is the statewide safety plan that is data driven and coordinated with state, local, and private partners. This comprehensive plan provides context for reduction of highway fatalities and serious injury on all public roads in Idaho. The SHSP is also part of requirement of the Highway Safety Improvement Program (HSIP), created by Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, or SAFETEA-LU, 23 U.S.C. § 148.

Although the overall goal of the SHSP is to reduce traffic fatalities on all Idaho roadways with the mission of providing the safest transportation system possible, it is required to include stakeholders the coordination of inclusion of partnerships specifically including federally recognized tribal governments. Data driven records of total crashes in Idaho and the impact on economics of crashes is noted as being the most important factor in prioritizing goals in the Idaho SHSP. Considering the economic focus on the cost of crashes and how it guides the Idaho SHSP. Integration of the Four E's of Traffic Safety: Engineering, Education, Enforcement, and Emergency Response and Policy with leadership that recognizes and includes tribes.

Idaho held previous workshops aimed at developing strategies to implement and outline goals for the SHSP. Idaho developed the SHSP at the 2005 Governor's Highway Safety Summit and updated at the 2009 SHSP Workshop and Peer Exchange. No notation of tribal involvement is found. This includes review of partners listed in the April 2013 SHSP. The completion of this report with little or no contact with tribes raises issues regarding communication or lack thereof.

Idaho's 2013 SHSP is based on five years of data from 2007-2011. SHSP outlines goals that are data-driven and identified eleven safety areas selected based on the economic costs of crashes. They are:

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- Aggressive Driving
- Distracted Driving
- Safety Restraints
- Impaired Driving
- Youthful Drivers
- Vulnerable Users (Bicycle/Pedestrian and Senior Drivers)
- Commercial Motor Vehicles (CMV)
- Lane Departure Crashes
- Intersection Crashes
- Emergency Response

Each area has developed strategies that include the Four E's. (p. 12) Idaho SHSP is also large guiding to other strategies in the Idaho Transportation's Department, such as the Strategic Plan and the Idaho Transportation Improvement Program (ITIP).

Idaho states that zero deaths remains the primary goal with reduction of traffic fatalities to less than 200 by 2015. Idaho SHSP states that "Collaboration and Coordination with Partners: The collaborative process of developing and implementing the SHSP brings together and draws on the strengths and resources of Idaho's safety partners. This process also helps coordinate goals and highway safety programs across the state." (p. 8) Other guiding principles within the SHSP are Data, Culture Change, Commitment, Partnerships, and Evaluation that SHSP is a living document, allowing for projects and improvement. (p. 11)

Nearly all eleven categories of Idaho SHSP crashes occur on rural roadways. High Risk Rural Road (HRRR) is defined as "roadway in Idaho that is functionally classified as rural major or minor collector. If the fatality rate on the rural major or minor collector roadways increases over the most recent two-year period for which data is available...the State of Idaho will obligate...set aside." (p. 13) Idaho in large part includes rural, including large area of Indian reservations.

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Initially my contact with Idaho Transportation Department SHSP leadership for comment on the SHSP went unanswered regarding the process leadership had conducted in regards to tribal participation. This summer I reached Lisa Lossness, Interim Highway Safety Manager who provided a response. Lossness expressed that tribes are "always extended an invitation to be part of the collaboration process, however because tribes not high visibility due to not being engaged in participation process and that Tribes receive grants from Federal Highway Administration grants for management of reservation roads." Being new to her position the updates are currently taking place with the Idaho SHSP. Invitations are sent, typically to tribal councils. Stressing that "Tribal input is desired, however Lossness stated she was not sure if this is something tribes would want to participate in given management of roads or no interest."

Data from Tribes to ITD is only received from Shoshone-Bannock and Shoshone-Paiute. Other tribes do not share data nor is it known if they collect such data. Idaho crash records are 100% electronic and recorded on elmpact database and citations are issued by eCitation. Data that is collected by tribes would help in the development of the SHSP, Lossness stated.

"All crash data is requested from every law enforcement agency in Idaho. The data would only be incomplete because Tribes don't report their crashes to us. Being sovereign nations, it is their decision as to whether they want to submit the data or not..."

2008-2012 data from Idaho in regards to Fatality total for Indian Reservations is 8 Crashes total for Tribes (that were reported) – Shoshone Bannock 7 and Shoshone Paiute 1. (Rich)

Office of Highway Safety reports that data is not specific for reservation and how data can be accessed is by mile marker or geographic location from accident reports. (Rich) Further review to identify issues that are part of the no participation in the SHSP process, ITIP sends to each Tribe's Tribal Employment Rights Office (TERO) in regards

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to hiring or contracting jobs on reservations as stated by both tribal and state representatives.

The 2014 Idaho Traffic Crash report indicates a 13.1% reduction in person killed in crashes, 2013 notes 214 persons killed and 2014 186 persons killed. (p. 14) of these fatal crashes 77% occurred on rural roadways. Also noted is the changes in number of crashes is correlated to changes in state population, number of drivers, number of registered vehicles, and the statewide Annual Vehicle Miles of Travel (AVMT). (p. 9)

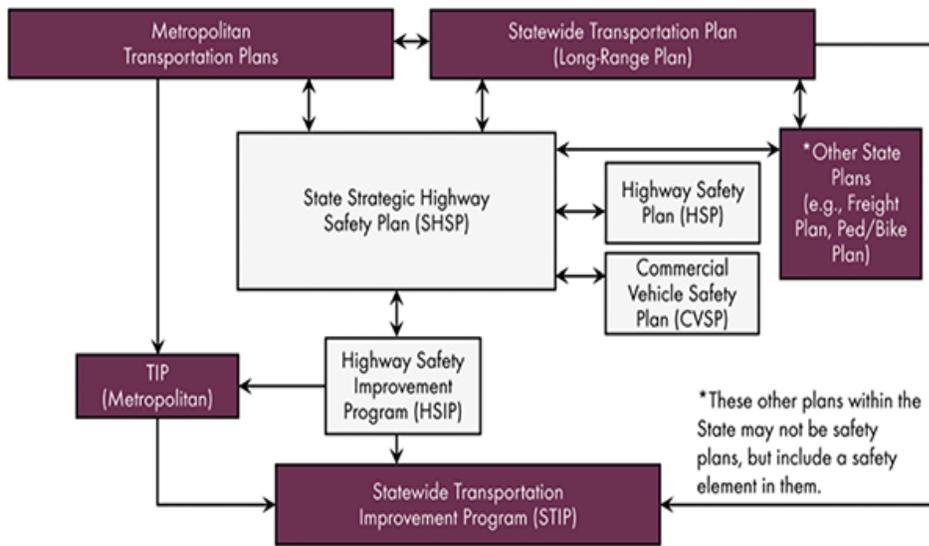
According to 2011 study from TRIP, a national nonprofit, Idaho ranked 2<sup>nd</sup> in the nation for the worst rural roads. TRIP determined that factors attributing to Idaho's high fatality rate are due to inadequate roadway safety design, longer emergency vehicle response times and higher speeds traveled on rural roadways. (Horstmeyer)



Also codified in this act is the program known as High Risk Rural Roads Program (HRRRP) that is part of HSIP that sets aside funds for safety improvement projects that addresses hazardous locations on public roads. It is important to note the definition of "Public Road" is "any road or street under the jurisdiction of and maintained by a public authority and

open to public travel." 23 U.S.C. § 101 (a)(27); "Public Authority" as "...a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities." 23 U.S.C. §101 (a) (23)

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Federal Highway Administration posts Noteworthy Practices Guide annually and Idaho was listed in 2013, 2014, and 2015. Integration of SHSP for Idaho includes collaboration various parts to make part of the whole in the planning process. States have various partners and safety concerns and plans to address. However noteworthy acknowledgement for the state includes bringing these parts to make a better SHSP to strategically place resources, set goals, and track progress. Other noteworthy accomplishment for Idaho is the process of evaluation.

Washington Noteworthy Practices include in 2014 Tribal Integration into the WA SHSP Target Zero Campaign. The Steering Committee includes Tribal representatives and reached out to 29 Federally Recognized Tribes in the state. Noted in 2012, a meeting between tribal participants helped develop the “Native American Tribes and Target Zero” chapter of WA SHSP. The success with Washington is the inclusion of Tribal partners to develop safety strategies for reservation roadways. Not only recognition of data of higher rate of accidents but setting data-driven goals with proven safety strategies for State, local, and Tribal agencies. (FHA)

### 2.0 Idaho Tribes and Traffic Safety

The following section describes the results of conversations and direct contacts with key tribal transportation officials.

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### 2.1 Tribal Response to SHSP & Crash Data Collection

#### **Kootenai Tribe**

##### **Resource:**

##### **Chief of Police Joel Minor,**

Data collection is currently not collected on reservation. The reservation is fairly small with few roads. Patrol issue. Rewrite tribal law and order codes, traffic codes. No copy for this report. Past agreement with Bonner County Sheriff to patrol and assist with monitoring of tribal roads, did not fulfill and tribe did not renew agreement nor no or long response time to incidents. Small tribal officer force, county does not assist on reservation.

#### **Coeur D'Alene Tribe**

##### **Resource:**

**Cody SiJohn, Chief of Police. Phone 208-686-2051 or 686-2053 January 2015.**

**Cody has 18 years of law enforcement experience plus BIA**

Q: Contact from State regarding SHSP? Letters of notification of trainings emails from State of Idaho and ISP. "CDA Tribe is a model of relationship that tribes should have with the state" Tribe worked hard to ensure this with forging relationships with surrounding counties and cities. Officers are cross-deputized in 2 counties. Communities are integrated, 50% Tribal and 50% nontribal. As compared to other Idaho reservations, NPT 7 or so counties to work with, and Shoshone-Bannock 1 county. However, Region 1 of Idaho State Police does not recognize tribal police at a partner, not advisory.

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Q: Codes? CDA has own criminal codes – any federally recognized tribe (not descendants, 1<sup>st</sup> nation, or non-tribal). Traffic Fines schedule mirrored from the state codes. Adopted some ID Traffic safety codes, not all, certain codes that don't apply to tribal people, for example:

- Eluding officer develop own codes tribal vice versa state. Meet needs of the community.
- ATV Codes – rural area, a lot of ATV's on roads, peoples farm lands/private property, younger riders driving. CDA Tribe developed codes to address issue
- In any stop the 1<sup>st</sup> issue is Who's Got Jurisdiction? Non-Tribal (includes descendant, 1<sup>st</sup> nation) State or County, and Tribal (all federally recognized tribal members) Tribal and face tribal infractions.

Tribal Law & Order Act –

Q: Jurisdiction Issue? Cross-Deputization agreements allow for more coverage and ensuring safety on roads. Tribal road, a County Officer can help tribe and ticket anyone. Tickets are then forwarded onto the tribe, to tribal prosecutor.

State of Idaho Highway Safety Program – ISP and County. Sometimes tribal are 1<sup>st</sup> Responders, ISP technology and reporting of fatalities. Tribal will secure scene, accident standard format form.

EX) "Don't Shatter The Dream" BIA Safety Program & Indian Highway Safety Program. DUI Checkpoints, Batmobile with holding cell. Hasn't been done consistently due to scheduling last minute. Crash incidents are reported to BIA and this is part of safety grant for DUI Enforcement.

States' Rights of Way, tribe can only maintain roads. Rural and City streets. Example of cooperation is the building of the tribe's Wellness Center and Benewah Medical Center. Planning committee installed sidewalks not only for accessibility but to encourage walking, health benefit.

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Q: Crash Data? CDA collects statistical data, reports sent to BIA and ISP/County use eImpact. CDA #'s are the same as State and BIA. Good reporting system and cooperation by County. eImpact form records management system. End of month BIA requests information. Integrated system in 2007. Prior to this records filed manually or contacted. Currently use FATPOT to input data. SPILLMAN is the other data system used, believed that Nez Perce Tribe is converting to FATPOT as it is more affordable.

### **Resource:**

#### **Lance Mueller – CDA Tribal Planning**

CDA Comments on ITIP but not on SHSP. Although SHSP may get sent to tribal council or to police department. ITP also involves local highway projects and local districts. TTP projects on state.

Q: Does CDA have safety plan? There is a long range Safety Plan, might include Transit program.

Q: Tribal Codes? Tribal Codes, Section 18. Motor Vehicle Offenses, working on ATV for tribal roads, as some drivers have no licenses yet are riding ATV's on roads.

Q: Does your office collect crash data or use data? Planning office is notified and is logged on map with dates and severity of crash. Knows that crash data is reported to state and tribal police gets data to their office.

Q: Are crashes attributed to engineering or behavior? Not necessarily a design flaw in engineering. Typically, run offs, speed, DUI, time of day/night, single or isolated crashes. Number one issue there is Behavioral. Possible ways to address would be Education and good Law Enforcement

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## Nez Perce Tribe

### Resource:

1/8/15 phone

Q: Crash Data. Ann's experience with county is that County Police use electronic database, eImpact. Crash data is entered into eImpact that includes reservation data, given PL 280. Assume that we (NPT) should have crash data from reservation.

Q: Codes related to traffic? NPT adopt State of Idaho code system. Forms used by Tribal Police are similar to State but adopted our own with tribal logo. Will email statutes and codes related to transportation, ticketing, and codes.

Example: Crash on reservation – Response depends on severity of crash and who the driver is (Tribal or non-tribal). Tribal is referred to NPT Court. County will refer tickets or infractions to NPT Court and is received by NPT Prosecutor's Office.

March 2015.

Q: Enforcement and PL 280:

WA partial 280

Wisconsin full PL 280, except Menominee. Relations are good, note reports and participation in cross deputation agreements as examples.

5/10/15 WA Legislature today regulation agreement on states

California full PL 280

Idaho partial PL 280. Note some bad relationships.

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Idaho County: Tribal 69 Housing(?) Office Carlos Martinez witnessed assault and battery – let her go (tribal member) due to jurisdiction and authority issue. Tribal member then barricaded themselves in the house.

Idaho County – Sheriff Giddings refuses to allow cross-deputization and will take steps to stop it. Tribe will have no authority...or authority to detain.

Sheriff Giddings referred to tribe as “those people” as to talking about intermarriage between whites and natives. Stated this at the NPT hosted “Cross Jurisdictional Conference” (2015)

Q: House Bill 111

Idaho doesn't record committee meetings. Suggest looking up Betsy Russell with Spokesman Review. 2008 and 2010 the CDA Tribe two efforts with House Bill 111. Issue was county agreements for cross-deputization and enforcement on reservation. Went to Idaho State Congress. Note that even the NRA was against cross-deputization as they found that CDA Tribal Code noted something about concealed weapons. Argue gun possession is illegal, yet hunting and gathering tradition of tribes. However, tribes may push measure again.

Forging relationships is part of cross-deputization agreements and vary depending on counties. State recognition would allow tribes to make MOA to make arrests or detain Indian and non-Indian alike.

With passing of the VAWA in 2013, the federal government gave tribal enforcement and law more authority to enforce in court.

Provision ID and WA the same: Tribal Code allows:

Insanity/Mental Capacity

State Hospitals – tribes don't.... MOA/MOU

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Tribal court recognize orders, concurrent: marriage, divorce, domestic

Traffic – State recognition. Nontribal crime on reservation, tribal can hold but not detain. Must wait for County or State to show.

### **Marie Arthur – SPILLMAN Technician. 2/3/15**

Submits crash data into electronic database. Fatalities are filed by ISP or county elmpact. Converted to FATPOT in September/October 2014. Since that time implementation and data entry from December 2014-February 2015 only couple of crashes.

Q: Access or sharing of crash data? Marie has no access to other crash data systems (state) and the NPT doesn't share data. Officer Danny Taylor submits reports to BIA on crimes that could include the total number of traffic stops. Perhaps contact Office Mike Gritner who is taking more lead on Traffic.

### **Office Mike Gritner**

Q: Tribal Law & Order codes: mirrored from state codes for most part. Example seatbelt infraction is primary offense and policing our own people (Nez Perce). State and County have jurisdiction over highway traffic. Requirements is that you must go to state academy (POST). Jurisdiction on Native American – tribal officer has authority to arrest, cite v. Non-native hold, if no response then let them go. Makes roads more dangerous and highway safety is an issue.

### **Chief David Rogers, November 2014 phone discussion**

**1/8/15** – unaware of elmpact and no access to that database. NPT reports data to Idaho State Police.

NPT has authority to stop and ticket NPT members, non-tribal can stop and warn. Jurisdictional conflict from local county sheriffs, however ISP support tribal policing noting that NPT Police are trained ID POST Academy trained and certified by

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academies. NPT has 20+ officers trained and could provide great number of aid to local communities. Concern local county sheriff's loss officers serve large area

**Q: Crash Data?** NPT assists but calls in ISP or County. Data is not shared, however Chief could attempt to request data from Idaho State Police. NPT is certifying one (1) crash/road safety officer – Officer Mike Gritner. YouTube Video on the Move Over Law 49-624, NPT Facebook page.

**Q: Codes related to Traffic?** NPT adopted state codes for enforcement. Jurisdictional issue arises. Example:

1. Nontribal woman driving 90mph and possibly DUI passed the Chief of Police and he pulled her over. Called in but no County or ISP available to respond. He had to let her go with a warning. Driver didn't know jurisdiction issue. Issue of safety and ability to enforce laws on roadways.
2. Spring 2014 Tribal descendants' wreck. Girl killed and no safety restraints. Other factors speed, negotiating curve, evening, raining. NPT Officers were 1<sup>st</sup> responders and applied 1<sup>st</sup> Aid/CPR and then assisted once County and ISP arrived.

### **Randy Brown – Transportation Planning Technician**

Q: SHSP? Not aware of Idaho SHSP reaching out to tribes, if they did it very low level.

Q: Crash Data access? None, would be helpful to map out areas as Tribe is starting work on Transportation Safety Plan. Waiting for grant approval, last safety plan done in 1990's. Crash data would be good for future grants to identify needs.

Q: Road and issues? NPT has 7.5 paved miles and 120-150 rural roads, typically dirt roads. Noted zero (0) as notation of miles makes them public and issue of keeping tribal lands accessibility to only tribal members.

Q: Codes related to Transportation? Unaware of transportation codes in tribal law & order codes. State of Idaho has basic codes and rules are enforced by tribe. Note that

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8 Highway Districts are in the Nez Perce Reservation. Signage for roads are per Federal Regulations and road maintenance guidance is per federal regulation.

**MaryBeth Frank Clark, Transportation Planner, 1/6/15**

The SHSP is typically sent to the tribe 90 days prior to print, DRAFT is sent and ITD wants "input" on SHSP. However, sentiment is that DRAFT is pretty much final and tribal input needs to happen before this point. Consultation is desired. Grant for NPT Safety Plan will need crash data to write plan and to also apply for additional grants once goals are lined out.

**Shoshoni-Paiute**

**Angele, Executive Secretary 208-759-3100, referred to Chair Lindsey Manning ext. 1231 & Steve Dean, Project Coordinator Tribal Programs ext. 1246 or [dean.steve@shopai.org](mailto:dean.steve@shopai.org).**

**Patrick Boice, Tribal Prosecutor or Calvin Hatch, Chief Judge, 775-757-2741**

**BIA Road Department 775-575-3330**

**Idaho Road Department 208-759-3927**

**Tribal Police 775-757-3614. Thomas Smart, Chief of Police BIA.** Reached police department and spoke with **Stacey**, secretary of department. Crash database kept, recently updated to electronic inputting of data onto eImpact for Idaho. They do not have their own database, previously paper filed and submit reports to BIA: Incident reports, collect on forms. However, last three years have submitted data to Idaho. They also share data with their planning office.

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Federal BIA office, half reservation is in Nevada that is non-Public Law 280, Idaho is PL 280. County and ISP assist.

Q: Codes? No traffic codes

Police Department – BIA, new data system and submit information to Idaho

***Shoshone-Bannock – not reached due to time in study, however is noted by State of Idaho as reporting crash data to state. Fully detailed Law & Order codes related to Traffic. The Shoshone-Bannock Transportation Planning Website***

Shoshone-Bannock –

The department patrols the reservation's 544,000 acres of land encompassing four counties (Caribou, Power, Bannock, and Bingham). There are more than 5,700 residents on the reservation; of those, about 4,100 are enrolled members of the Shoshone-Bannock Tribes. Patrol officers enforce tribal and federal laws on the Fort Hall Indian Reservation.

The Fort Hall Police Department operates under a 93-638 Contract with Bureau of Indian Affairs (BIA) to provide law enforcement services to the Fort Hall Reservation. The contract requires the department to be in compliance with 25 C.F.R. for law enforcement, 18 USC, current BIA Law Enforcement Handbook, and Tribal Law and Order Code. (Shoshone-Bannock website)

## 2.2 Tribal Codes Related to Transportation & Traffic Safety

Shoshone Paiute – no codes related to traffic, seatbelt, and transportation. Policing is done by Bureau of Indian Affairs.

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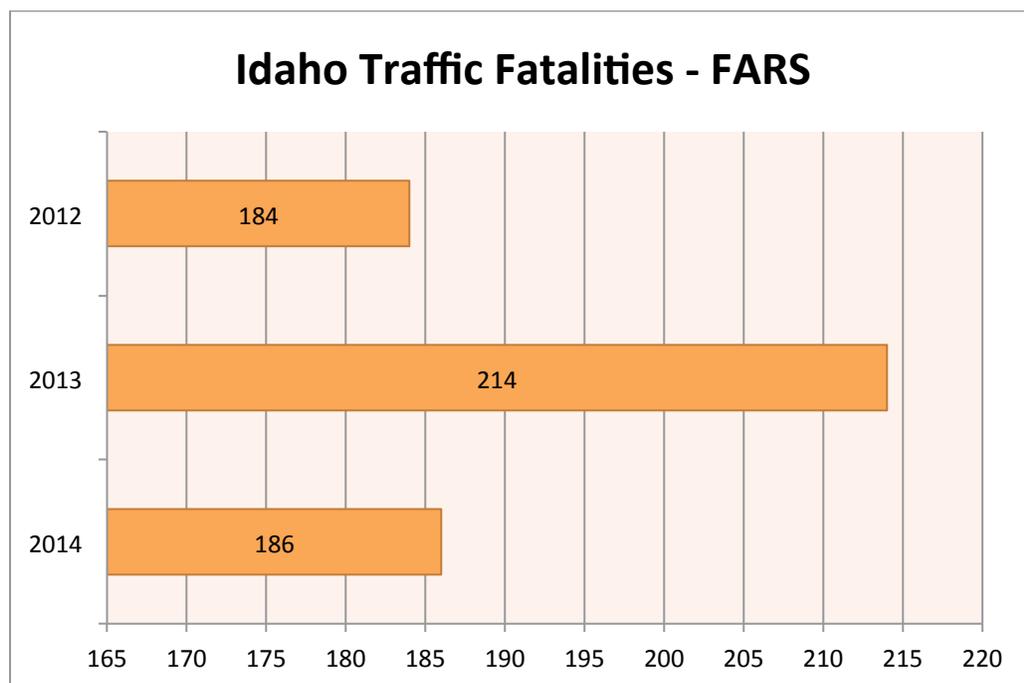
Kootenai – currently revising codes. No copy available.

CDA – request copy

Nez Perce – Chapter 4-2 “Traffic” (2 pgs.), noted agreement with Idaho State Police and PL 280

Shoshone-Bannock – Chapter XVIII “Traffic Code” (57 pgs.)

### 2.3 Crashes on or near Indian Reservations



Source: National Highway Traffic Safety Administration. 2013 Traffic Fatalities by STATE and Percent Change from 2012: Idaho. <http://www-fars.nhtsa.dot.gov/States/StatesCrashesAndAllVictims.aspx>

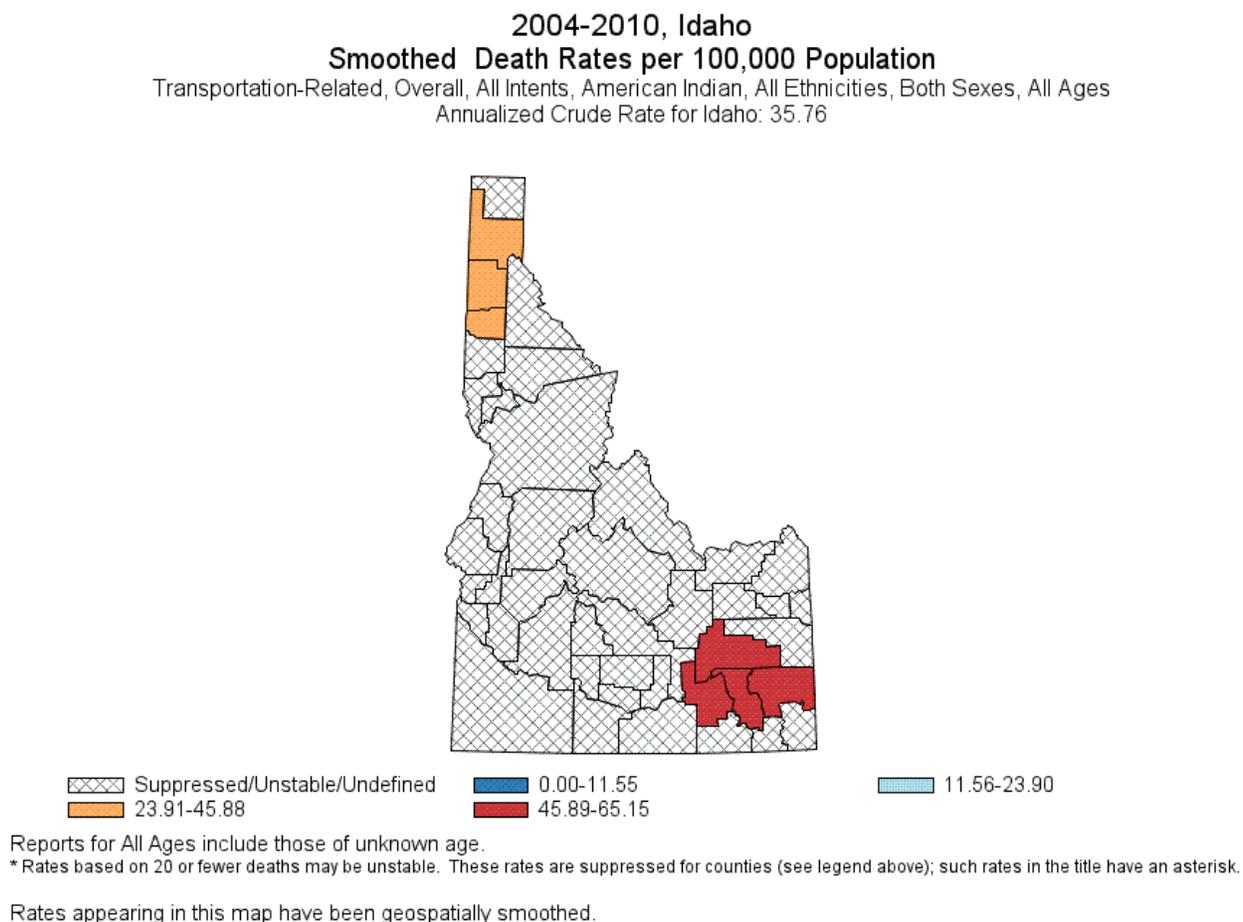
Idaho Crash Report released in 2014 report that reviews crash data and summarizes crash characteristics that occurred on public roads in Idaho. Such data is reviewing the cost of traffic crashes along with identifying problem areas based on subgroups: drivers, pedestrians, roadways, vehicles, and behavior by “study of relationships between crashes and the population, licensed drivers, registered vehicles, vehicle miles traveled,

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and characteristics of specific subgroups that may contribute to crashes.” (ID Traffic Report p.6)

It is important to note that ITD is responsible for building, maintenance the roads in their highway system, that include Interstates, US Highways, and State Highways. All other roads are under jurisdiction of counties, cities, or local highway districts (ITD Appendix C).

Data sources from the Center for Disease Control and transportation related fatalities from 2004-2010 indicates Idaho fatal injury mapping.



Produced by: the Statistics, Programming & Economics Branch, National Center for Injury Prevention & Control, CDC  
Data Sources: NCES National Vital Statistics System for numbers of deaths; US Census Bureau for population estimates.

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Although data from this map highlight counties on or near the Shoshone-Bannock Indian Reservation, Coeur d'Alene Indian Reservation, and Kootenai Indian Reservation. Data is from the Web-based Injury Statistics Query and Reporting System (WISQARS) Fatal Injury data that is collected mortality database compiled by the CDC National Center for Health Statistics. It is compilation from death certificates filed to state vital statistics offices that includes cause of death and demographic information.

Counties demonstrating highest rates of transportation related fatalities according to this data seven counties:

County	State FIPS	County FIPS	S.C. Rate	Population
Bannock	16	5	65	20350
Power	16	77	61	1715
Caribou	16	29	57	235
Bingham	16	11	52	23107
Bonner	16	17	30	3024
Kootenai	16	55	27	14805
Benewah	16	9	25	6354

### 2.4 Issue of Law Enforcement

Three of the tribal law enforcement Chiefs for the tribes has expressed concern over law enforcement and Public Law 280. The Idaho Tribal-Court Bench Book was developed by Doug Nash, Nez Perce Tribal Judge to help Idaho Lawmakers and Courts understand the history of Tribe, Idaho reservations, and laws that govern them. Court cases are numerous as examples that demonstrate tensions between local government, tribes, and citizens.

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During the Termination Era of the federal Indian Policy in the United States, in 1953 Congress enacted Public Law 280, 18 USC § 1162 that authorized states to have jurisdiction over Indian matters. However in 1968 with the passing of the Indian Civil Rights Act, 25 USC § 1321(a) that modified Public Law 280 to require formal tribal consent to state jurisdiction. The State of Idaho statute related to tribal consent for additional state jurisdiction is I.C § 65-5102 (1989). Idaho Statutes, Title 67, Chapter 51 or 67-5101 State Jurisdiction for Civil and Criminal Enforcement Concerning Certain Matter Arising in Indian Country outlines that Public Law 280:

“hereby assumes and accepts jurisdiction for the civil and criminal enforcement of state laws and regulations concerning the following matters and purposes arising in Indian country located within this state, as Indian country is defined by title 18, United States Code 1151, and obligates and binds this state to the assumption thereof:

- A. Compulsory school attendance
- B. Juvenile delinquency and youth rehabilitation
- C. Dependent, neglected and abused children
- D. Insanities and mental illness
- E. Public assistance
- F. Domestic relations
- G. Operation and manage of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof.

Additionally 67-5102 Additional State Jurisdiction with Consent of Tribe Governing Body summarizes that negotiation and consent of Tribe by a tribal resolution what is Attorney General. Tribe can accept jurisdiction as any field of criminal or civil jurisdiction. Jurisdiction under Public Law 280 and 67-5102 is that concurrent with federal and tribal law, state law is not exclusive.

The Nez Perce Tribe had accepted unilaterally by governing body resolution in 1965, NP 65-126 that had expanded Public Law 280 and state jurisdiction for listed minor criminal offenses. In 1999 the Nez Perce Tribe had rescinded this action under tribal resolution that referenced establishment and training of tribal police force to handle

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crimes on the reservation and that the tribe felt it "essential to sovereignty of the Nez Perce Tribe that the law enforcement jurisdiction transferred by NP 65-126 be returned to the exclusive control of the Tribe." (Steiglitz)

Opposition of tribal sovereignty and jurisdiction issues arises to point of conflict as met with House Bill ... with Coeur D'Alene Tribe to Nez Perce Tribe resolution in 1999 that was met with opposition by the North Central Idaho Jurisdictional Alliance comprised of counties (Clearwater, Idaho, & Lewis), businesses, cities (Kamiah, Craigmont, Stites, Orofino, Reubens, Nez Perce, & Winchester), school districts (Kamiah, Highland, & Nez Perce), highway districts (Central, Evergreen, Prairie, Kamiah, Kidder-Harris, North, Winona, Greencreek) and individuals. The alliance interest and long term dispute spanned 5 years to challenge tribal jurisdiction over non-Indians, reservation integrity given the checker-board and opening of reservation to settlement during the allotment period, taxation, Tribal Employment Rights TERO, water claims, and policing.

(Hedberg) Highway Districts oppose due to TERO ordinance of hiring tribal members to work or opportunity for tribal contractors to bid for projects or face fine, stated that doing so increases costs of projects for local highway districts. In the 1990's the expansion of the Nez Perce Tribal police force became an issue, along with the leading the resolution in 1999 of police jurisdiction over non-tribal members and vehicle traffic stops. (NCIJA website)

Another example of the NCIJA was the traffic stop made by tribal officer pulled over a county prosecuting attorney for speeding. The attorney told the officer that tribal police had no jurisdiction over non-Indians and sped off, leading to a high-speed chase.

(Powell)

The Idaho Council on Indian Affairs is granted by Idaho Code 67-4004 is composed of tribal leaders, appointed Idaho Legislators, and Idaho Governors representative makeup this council. In these meetings tribes are meeting in 2013, a representative presented on the issue of jurisdiction and history of reservations in Idaho. Further noted is the continued "gray areas" of jurisdiction, environmental concerns and Public Law 280. (p. 3 meeting minutes) Review of tribal participation at government-to-government level

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between tribes and state for Idaho is this committee. Per Idaho Council on Indian Affairs By-Laws, Article III Meetings: There shall be two (2) regular meetings of the Council per year. Recent contact with Idaho Council on Indian Affairs Chair is that no meeting has been held since 2014 meeting. Meeting requests are also dependent on Tribe's response to conduct meetings and send in agenda items that are time to express Tribal concerns.

### **From Shoshone-Bannock website regarding roads and PL 280**

#### IRR Roads

Idaho is a PL 280 state; and, in 1963, the state passed laws providing, among other things, for concurrent civil and criminal jurisdiction with the Tribes and the federal government over any of our roads that are maintained by the county or state (Idaho Code §§67-5101 & 5102). Starting in the 1940's through the 1990's, because the BIA did not have the funds or equipment to keep up with the road maintenance on all our IRR roads, it entered into road maintenance agreements with the counties in which the Reservation is located. Under these agreements, upon construction of certain roads by the BIA, the counties were to maintain them. As a result, the counties and the state assumed concurrent jurisdiction over these roads.

While the Tribes receives its IRR funds from the BIA, the state and the counties are able to count our IRR roads in their inventories under the maintenance agreements and, thus, gain road funds for these miles. However, the state and the county provide very little maintenance for roads over which they have responsibilities.

In January 2009, the Tribes entered into a Memorandum of Agreement (MOA) with Bingham County (County), one of the four counties in which the Reservation is located, so that the Tribes exercise regulatory authority over land use and zoning matters on the Reservation and the County defers to the Tribes on these matters. This MOA reflects the parties' cooperative approach to land use regulation for lands located within the

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boundaries of the Reservation and the County. In 2010, the County relinquished all the maintenance agreements they held on about 20 miles of IRR roads on the Reservation. As a result, the Tribes can begin to receive IRR road maintenance dollars for these miles.

The Tribes plan to reach out to Bannock County, which has concurrent jurisdiction and maintenance agreements over approximately 33 miles of our IRR roads, and to Power County, which has concurrent jurisdiction and maintenance agreements over approximately 20 miles of our IRR roads, to see if similar agreements can be executed with them as with Bingham County. Currently, the Tribes have approximately 450 miles of roadway under the IRR road system we maintain. If the Tribes gain back the remainder of the roadways that were placed in maintenance agreements with the counties, then our road miles under IRR maintenance would be approximately 520 miles, allowing us to receive IRR road maintenance funds for them.

As for the national controversy amongst tribes over the allocation of funds under the IRR Program, we believe that state and county roads should not be counted in the IRR inventory given the limited pot of money. IRR funds should lawfully only be used for IRR roads. Counties and states have responsibilities to maintain their roadways and receive funding to do so. Basically, allowing non-IRR roads into the system changes the amounts all tribes receive for road maintenance of IRR roads -- for the worse. Large land-based tribes like the Tribes with large amounts of IRR road miles suffer as a result. For instance, we used to receive about \$1.2 million per year for our contract dollars but now we receive about \$930,000 per year under our 638 contract at least partially due to some of the smaller or road less tribes supplanting some of our dollars by including state/county roads in their IRR system. Our funding for road maintenance is now \$393,000, down from \$470,000 in recent years, due to the inclusion of state and county roads in the IRR system.

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### 3.0 Strategies to Improve Tribal involvement in Idaho SHSP

Respectively it is apparent that majority of Idaho's Tribes are not involved in partnering with the development of statewide safety goals in Idaho Strategic Highway Safety Plan. There are some issues arisen that are not only with the state's outreach to tribes but also with access to crash data, policing, and development of Tribal Safety Plans. The NCHRP Report 788: Guide for Effective Tribal Crash Reporting is starting point for Tribes to analyze current efforts and relationship with States and crash data. In same report States can review on how they can develop tribal involvement in planning process. (Appendix A, p. 68)

Understanding that higher proportion of residents on Indian Reservations is American Indians it is important to review crash data to decipher is there are a disproportionate number of American Indian fatalities in motor vehicle crashes that occur on the reservation. Analysis of crash data is important to not only plan or partner, but to understand the total number of accidents and fatalities of American Indian people. Report of fatalities from Coroner's office (49-1309) reports deaths by traffic accident to Transportation Department. The form itself does not include race or ethnicity of the individual and if data is not available from state then data from NHTSA's FARS or other reporting agency would be important to be accessible to.

The high amounts of crashes from Idaho Transportation Department showed that areas near Indian Reservations had highest amount of crashes, it is important to understand data and link to assist with tribes to become not only aware but have participation in SHSP Target Zero participation to advocate for goals to reduce the number of accidents and fatalities on reservations.

Restraint usage, speeding, and alcohol involvement are three big causes of concern on Reservations. The restraint usage rate, for the most recent year, 2002, is 16 percent for fatally injured occupants of passenger cars and light trucks. This compares unfavorably with the 38 percent restraint usage rate for the nation. Forty-one percent of fatal crashes on reservations in 2002 involved speeding compared to 31percent in the nation. Forty-

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two percent of the fatalities in crashes were the result of a crash where at least one vehicle was speeding. This is 10 percent more than the 32 percent for the nation. Similarly, 56 percent of the fatalities on reservations in 2002 were the result of an alcohol-related crash compared to 41 percent in the nation. Drivers involved in alcohol-related crashes on reservations (48%) are still about 18 percent higher than the drivers involved in alcohol-related crashes in the nation (30%) as a whole.

Specific safety, education, and enforcement programs need to be established primarily for high risk Native Americans (under 35 years old), who make up 63 percent of the fatalities in motor vehicle crashes on Indian reservations. In addition, improvements in data and record keeping at the Federal and state level could result in better data for the FARS system. (Poindexter p. 30)

In 2009 Idaho was noted by NHSTA for hosting a Peer Exchange event that focused on Idaho's SHSP. The workshop included over 100 participants to work in groups to start an outline of priorities for the state's SHSP to ensure the following goals are met:

- Plan is data-driven;
- Plans need to be coordinated with other statewide and regional planning documents (freight, commercial vehicles, MPO plans) to ensure a common goal;
- Plans should integrate engineering, education, enforcement, and emergency response;
- Plans should consider the safety needs of all public roads; and
- Highway safety investment decisions should be guided by the plan and evaluated.

Continued as historical issue in Idaho is the matter of relationships and collaboration. Communication for planning, accessing crash data or assisting submitting data for reservations to the state system would allow for better planning and attention to areas of concern in tribal communities to develop tribal safety plans that also accompanies or is supported by Idaho SHSP. The large concern is the lack of communication based jurisdictional issues that remain today.

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Despite on-going conflicts between the state and specific Counties in relation to their interpretation of Public Law 280 and its implications for tribal transportation planning around traffic safety, high death rates become part of the result of no involvement.

Cross-deputization between counties and tribes or Idaho Legislation to improve safety on reservation roadways would be opportunities to improve safety and save lives. Not only does this include agreements or legislation but the attention of Idaho Committee of Indian Affairs, tribal leaders, law enforcement, and even state representatives to push this issue forward.

The findings of this study are that the federally recognized tribes within Idaho need to collect and report traffic safety data and plan for safety on their own reservations, but they also need to participate in statewide SHSP Planning to coordinate and take advantage of cooperation to address critical rural transportation needs. They need to be recognized and part of state SHSP plans. I hope this report can initiate communication and workshops/training sessions to establish tribal involvement, and to begin a detailed analysis of reservation crash data to support effective tribal safety initiatives.

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### Personal Communication

The following people were contacted directly and provided information for this study.

Losness, Lisa, Interim Highway Safety Manager & SHSP Coordinator. Idaho Transportation Department, Highway Safety Contact.

Goertz, Margaret, Traffic Records. Idaho Transportation Department, Highway Safety.

Rich, Steve, Research Analyst Principle Behavioral Data Analysis and Dissemination. Idaho Transportation Department, Highway Safety.

Weldin, Kristin, Training. Idaho Office of Highway Safety.

Minor, Joel, Chief of Police. Kootenai Tribe. Interview on January 2015.

Aitken, Gary Jr., Tribal Chairman. Kootenai Tribe of Idaho. [www.kootenai.org](http://www.kootenai.org). 208-267-3519

SiJohn, Cody, Chief of Police. Coeur d'Alene Tribe. Interview January 2015.

Mueller, Lance, Planning Technician. Coeur d'Alene Tribe. Public Works Department. <http://www.cdatribe-nsn.gov/TribalDepts/PublicWorksDept.aspx>

Rogers, David, Chief of Police. Nez Perce Tribe. Phone interview November 2014 & January 2015.

Taylor, Daniel, Police Officer. Nez Perce Tribal Police. February 2015.

Arthur, Marie, Spillman Administrator. Nez Perce Tribal Police data collection. January 2015.

Kelleher, Ann, Prosecutor. Nez Perce Tribe. Phone interview November 2014.

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Dean, Steve, Project Coordinator. Shoshone-Paiute Tribal Administration. 208-759-3100

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