
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: AB 3099 **Hearing Date:** July 31, 2020
Author: Ramos
Version: July 9, 2020
Urgency: No **Fiscal:** Yes
Consultant: NS

Subject: *Department of Justice: Law Enforcement Assistance With Tribal Issues: Study*

HISTORY

Source: Author

Prior Legislation: AB 1653 (Frazier), 2019-2020, Held in Assembly Appropriations
AB 301 (Chu), 2019-2020, Held in Assembly Appropriations

Support: NextGen California; Peace Officers Research Association of California (PORAC);
Riverside Sheriffs' Association; San Manuel Band of Mission Indians (Sponsor);
Tule River Tribal Police Department

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require the Department of Justice (DOJ) to provide technical assistance, subject to appropriation by the legislature, to local law enforcement agencies that have Indian lands within or abutting their jurisdictions, and to tribal governments with Indian lands, including those with and without tribal law enforcement agencies. The technical assistance is specified as, providing guidance for law enforcement education and training on policing, improving crime reporting etc., educational materials about the complexities of concurrent criminal jurisdiction with tribal governments and their tribal law enforcement agencies, and facilitating improved communication between local law enforcement agencies and tribal governments and their law enforcement.. It also requires the department to conduct a study to increase protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.

Existing law federal law defines "Indian Country" as:

- 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 within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and,
- c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. § 1151)

Existing law provides concurrent California and Tribal jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country (18 U.S.C. § 1162.):

- a) If the offender is non-Indian, and the victim is non-Indian, the state has exclusive jurisdiction; (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)
- b) If the offender is non-Indian, and the victim is Indian, the state has exclusive jurisdiction; (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)
- c) If the offender is Indian, and the victim is non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government; (Indian Civil Rights Act, 25 U.S.C. § 1301.)
- d) If the offender is Indian, and the victim is Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government; (Indian Civil Rights Act, 25 U.S.C. § 1301.)
- e) If the offender is non-Indian, and there is a victimless crime, the state has exclusive jurisdiction; or, (*Draper v. United States*, 164 U.S. 240 (1896); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).)
- f) If the offender is Indian, and there is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.)

Existing law provides California limited jurisdiction over civil offenses that occur within Indian country (25 U.S.C. § 1322, subs. (a) & (c).)

Existing law defines a "hate crime" as any criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim: Disability, Gender, Nationality, Race or ethnicity, Religion, Sexual orientation; or, association with a person or group with one or more of these actual or perceived characteristics. (Pen. Code, § 422.55, subd. (a).)

Existing law requires the Attorney General to direct local law enforcement agencies to report specified information relative to hate crimes to DOJ. (Pen. Code, § 13023, subd. (a).)

Existing law requires every state and local law enforcement agency to make available a brochure on hate crimes to victims of these crimes and the public. (Pen. Code, §422.92, subd. (a).)

Existing law requires the Department of Fair Employment and Housing to provide existing brochures to local law enforcement agencies upon request for reproduction and distribution to victims of hate crimes and other interested parties. In carrying out these responsibilities, the

department shall consult the Fair Employment and Housing Council, the DOJ, and the California Victim Compensation Board. (Pen. Code, §422.92, subd. (b).)

Existing law requires the department to annually submit a report to the Legislature that analyzes the results of information obtained from local law enforcement pursuant to these provisions, and update the OpenJustice Web portal with the information obtained from local law enforcement agencies. (Pen. Code, § 13023, subds. (a) and (b).)

Existing law establishes in the Office of Emergency Services a program of financial and technical assistance for local law enforcement, called the Rural Indian Crime Prevention Program. (Pen. Code, § 13847, et seq.)

This bill states the legislature finds and declares:

- a) In Public Law 83-280, Congress expressly granted California concurrent criminal jurisdiction with California's tribal governments over specified areas of Indian country within the state for the enforcement of statewide criminal laws. A lack of consistency in the application of PL-280 on California Indian country currently exists statewide creating jurisdictional uncertainty for local law enforcement and California tribes with Indian land.
- b) Existing law establishes a California missing persons registry, in addition to other missing persons networks and databases that are designed to assist law enforcement in their investigations of missing and unidentified persons in California.
- c) According to most recent census data, California is home to more people of Native American and Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes and over 70 non-federally recognized tribes in California. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian country."

This bill requires the Department of Justice, upon an appropriation of funds by the Legislature, to provide technical assistance to local law enforcement agencies, as specified, and tribal governments with Indian lands, relating to tribal issues, including-providing guidance for law enforcement education and training on policing and criminal investigations on Indian lands, providing guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools, and facilitating and supporting improved communication between local law enforcement agencies and tribal governments.

This bill requires the department, upon appropriation of funds by the Legislature, to conduct a study to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native Americans in California, particularly women and girls.

This bill would require the department to submit a report to the Legislature upon completion of the study, as provided.

COMMENTS

1. Need for This Bill

According to the author:

“PL 280 is an intricate statute. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the everyday effect of PL 280 has often gone beyond that which was legally necessary, anticipated, and considered. PL 280 has generally brought about an increased and confusing state role in civil related matters in Indian Country.

This confusion has led to a lack of operational capacity at the California Department of Justice to provide data reporting and statistical research for adequately addressing Missing and Murdered Indigenous Women and Girls (MMIWG). In addition, the lack of tribal outreach among state law enforcement and tribal law enforcement perpetuates and dis-incentivizes collaboration between state and tribal law enforcement to solve cases involving MMIWG.

By having three additional tribal specific positions within the California DOJ that can collect and report data and statistics on MMIWG, as well as create and distribute outreach materials relating to collaborative law enforcement efforts between state and tribal law enforcement entities, California can begin to find solutions to unmet tribal public safety needs, including the problem of MMIWG.”

2. Public Law 280

Public Law 280 is a federal law enacted in 1953, which controls relationships between Indian Lands and six states, including California. The law shifted to these states, from federal jurisdiction, giving them the right to prosecute most crimes occurring on Indian land. The propriety of Public Law 280 was questioned at the time of the law’s passage and continues to raise questions as to its appropriateness and efficacy¹.

A 1995 study examined California’s tribes experience and satisfaction with State law enforcement. The study found there was Tribal concerns about jurisdictional confusion, inadequate or untimely response, and insensitive or discriminatory treatment was taking place. The researchers concluded that “limited and uncertain State jurisdiction under PL 280, coupled with the absence of tribal justice systems and law enforcement, created situations where no legal remedies existed”².

3. Tribal Law and Order Act (TOLA) of 2010

The Tribal Law and Order Act of 2010 (TOLA) was signed by President Obama in an effort to address rising crime on Indian lands, and decrease violence against indigenous people. TOLA authorizes tribal governments to request that the U.S. Department of Justice resume federal criminal jurisdiction over that tribe’s land. This created concurrent jurisdiction between the states and federal

¹ 1Carole Goldberg-Ambrose, Public Law 280 and the Problem of Lawlessness in California Indian Country, 44 UCLA L. Rev. 1405 (1997).

² <https://www.ncjrs.gov/pdffiles1/nij/209839.pdf>

government to prosecute crimes. In 2018, 999 crimes on Indian Territory were referred to the U.S. DOJ for prosecution; 64.3% of these cases were not prosecuted due to insufficient evidence.³

4. Hate Crimes Against Native Americans

Several news outlets have reported that hate crimes against Native Americans have been on the rise⁴, but due to improperly categorized incidents and lack of data reporting by law enforcement there is not strong data that shows this trend. According to the National Congress of American Indians, Native Americans make up about 0.9% of the US population.⁵ In 2017, the FBI reported that there were 5,060 victims of race/ethnicity/ancestry motivated hate crime, and of those 6.3% were victims of anti-American Indian or Alaska Native bias.⁶

5. Underreporting of Crimes

Currently hate crime data is voluntarily submitted to the FBI's Uniform Crime Reporting (UCR) Program by local law enforcement agencies. In 2017, 1,094 hate crimes were reported in California.⁷ One study found that only about 10% of victims report hate crimes to tribal or local police due to secondary victimization or retaliation by the perpetrator.⁸ A 2014 study found that police may also be confused about what constitutes a hate crime.⁹ Further, hate crimes are classified as federal crimes, so they fall under FBI jurisdiction, not local, which could contribute to why crimes are rarely classified as such. One study found that "between 2004 and 2012, an average of 269,000 victimizations were reported by the NCVS."¹⁰ During this same time period, the FBI UCR hate crime statistics reported an average of 8,770 incidents. This discrepancy implies there may be an underreporting of hate crimes.¹¹ This bill seeks to provide additional resources to law enforcement agencies with Indian lands in their territory to collect data and statistics in an effort to better understand and respond to crimes involving Native American communities and tribal land.

In 2016 the National Crime Information Center reported 5,712 reports of missing American Indian and Alaska Native women and girls, however only 116 cases were logged in the DOJ database. The Center for Disease Control and Prevention has reported that murder is the third-leading cause of death among American Indian and Alaska Native women. It also states rates of violence on reservations can be up to ten times higher than the national average. However, no research has been done on rates of such violence among American Indian and Alaska Native women living in urban areas despite the fact that approximately 71% of American Indian and Alaska Natives live in urban areas.¹²

³ *Indian Country Investigations and Prosecutions*, U.S. D.O.J., available at <https://www.justice.gov/otj/page/file/1231431/download>

⁴ Bleir, Zoledziowski, *Murdered and Missing Native American Women Challenge Police and Courts*, Aug. 27, 2018 The Center for Public Integrity, available at: <https://publicintegrity.org/politics/murdered-and-missing-native-american-women-challenge-police-and-courts/>

⁵ *Demographics*, Nat'l Conf. of American Indians, available at: <http://www.ncai.org/about-tribes/demographics>, last accessed

⁶ 2017 Hate Crime Statistics, FBI, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims>

⁷ 2017 Hate Crime Statistics, FBI, available at <https://ucr.fbi.gov/hate-crime/2017/topic-pages/victims>, last accessed May 10, 2020.

⁸ Barbara Perry, *Silent Victims: Hate Crimes Against Native Americans*, 2008, University of Arizona Press, available at <https://www.h-net.org/reviews/showpdf.php?id=29737>

⁹ Hillary D. McNeel, *Hate Crimes Against American Indians and Alaskan Natives*, available at <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=270163>

¹⁰ Frank Pezzella, et al. *The Dark Figure of Hate Crime Underreporting*, January 2019, American Behavioral Scientist, available at https://www.researchgate.net/publication/330708636_The_Dark_Figure_of_Hate_Crime_Underreporting

¹¹ 2004-2012, FBI UCR Hate Crime Statistics, available at <https://ucr.fbi.gov/hate-crime>

¹² <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

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6. Argument in Support

According to the Tule River Indian Tribe of California:

“Policing in Indian Country under PL 280 present enormous challenges to both Tribal and State police officers. The jurisdictional complexity for Tribal officers requires knowing where a violation of tribal law occurred and the identification of the violator as a tribal member, non-Indian or non-member Indian. For State officers, questions arise of when and how they should take custody of a person detained by a Tribal officer in Indian Country for a violation of State criminal law. Lack of reporting is a serious obstacle to understanding the challenges presented from State Jurisdiction in Indian Country....

AB 3099 would improve reporting, training, and outreach to tribal police creating tribal specific data reporting positions at the DOJ. These positions would help close the gap among state and local law enforcement and tribal law enforcement to create trust and foster relationships in an effort to improve data reporting practices and coordination between the varying levels of law enforcement”

-- END --