
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2281 **Hearing Date:** June 18, 2024
Author: Soria
Version: February 8, 2024
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Tribal judges*

HISTORY

Source: California Indian Legal Services

Prior Legislation: AB 2322 (Daly), Ch. 914, Stats. 2018
SB 1131 (Galgiani), held Senate Approps. Comm. 2016
AB 2687 (Bocanegra), Ch. 273, Stats. 2014
AB 506 (Poochigan), Ch. 466, Stats. 2006

Support: California State Sheriffs' Association; California Tribal Business Alliance;
Judicial Council of California; Northern California Tribal Court Coalition; Tule
River Tribe

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to add tribal judges of federally recognized California Indian tribes to the list of “public safety officers” for purposes of requesting confidentiality of personal information and for increased punishment under specified assault or attempt to commit murder statute.

Existing federal law states that California has jurisdiction over offenses committed by or against Indians in Indian Country to the same extent that the State has jurisdiction over offenses committed elsewhere in the State. (18 U.S.C. § 1162.)

Existing federal law provides that the criminal laws of California shall have the same force and effect within Indian country as they have elsewhere within the State. (18 U.S.C. § 1162.)

Existing federal law defines “Indian country” as all land within the limits of any Indian reservation under the jurisdiction of the United States Government. (18 U.S.C. § 1151.)

Existing federal law authorizes tribal courts to exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for

the crime of assault of tribal justice personnel, even if neither the defendant nor the alleged victim is an Indian. (25 U.S.C § 1304, subds. (a)(1), (a)(5)(A), & (b)(4)(A).)

Existing federal law defines “assault of tribal justice personnel” as any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe... during, or because of the performance or duties of that individual in... adjudicating, participating in the adjudication of, or supporting the adjudication of an [assault of tribal justice personnel].” (25 U.S.C. § 1304, subd. (a)(1).)

Existing law defines “assault” as an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. (Pen. Code, § 240.)

Existing law states that simple assault is punishable by a fine not exceeding \$1,000.00, or by the imprisonment in the county jail not exceeding six months, or by both the fine and imprisonment. (Pen. Code, § 241, subd. (a).)

Existing law punishes assault by any means of force likely to produce great bodily injury by imprisonment in the state prison for two, three or four years, or in a county jail for not less than 6 months and not exceeding one year, or by both imprisonment and a fine not exceeding \$10,000. (Pen. Code, § 245, subd. (a)(4).)

Existing law provides that a person who commits assault on specified public officials or their immediate family, including any justice, judge, or former judge of any local, state, or federal court, or other subordinate judicial officer of any court, in retaliation for or to prevent the performance of that official’s duties, shall be punished by a term of imprisonment not to exceed one year or by 16 months, two or three years. (Pen. Code, § 217.1, subd. (a).)

Existing law defines “battery” as any unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

Existing law states that simple battery is punishable by a fine of up to \$2,000, or by imprisonment in county jail not exceeding 6 months, or by both a fine and imprisonment. (Pen. Code, § 243, subd. (a).)

Existing law states that if battery is committed against a person and serious bodily injury is inflicted on the person, the battery is an alternate felony-misdemeanor punishable by imprisonment in a county jail not exceeding one year or imprisonment for two, three, or four years. (Penal Code §243, subd. (d).)

Existing law provides that persons attempting to commit crimes punishable by imprisonment in county jail or state prison are punishable by a term not to exceed half the term of imprisonment associated with the offense, although attempted first degree murder is punishable by life in prison with possibility of parole. (Pen. Code, § 664.)

Existing law punishes attempted murder, except attempted first degree murder, by imprisonment in the state prison for 5, 7 or 9 years. (Pen. Code, § 664, subd. (a).)

Existing law provides that a person who attempts to murder any justice, judge, or former judge of any local, state, or federal court, or other subordinate judicial officer of any court, in retaliation for or to prevent the performance of that official's official duties, shall be confined in state prison for 15 years to life. (Pen. Code, § 217.1, subd. (b).)

This bill adds tribal judges to existing provisions of law on assault or attempted murder in retaliation for or to prevent the performance of official duties which provides for increased punishment than the standard assault or attempted murder statutes.

Existing law authorizes any person filing with the county elections official a new affidavit of registration or reregistration to have the information relating to his or her residence address, telephone number, and email address appearing on the affidavit, or any list or roster or index prepared therefrom, declared confidential upon order of a superior court issued upon a showing of good cause that a life-threatening circumstance exists to the voter or a member of the voter's household, and naming the county elections official as a party. (Elec. Code, § 2166.)

Existing law authorizes county elections officials, upon application of a public safety officer who states that a life threatening circumstance exists to the officer or a member of their family, to make confidential that officer's residence address, telephone number, and email address appearing on their affidavit of voter registration. (Elec. Code, § 2166.7, subds. (a) & (b).)

Existing law defines a public safety officer, for purposes of voter registration confidentiality, to include state and federal judges and court commissioners, peace officers, city attorneys, attorneys employed by the Department of Justice, State Public Defender, county district attorney offices, county public defender offices, the U.S. Attorney, or the Federal Public Defender, and specified employees of the Department of Corrections and Rehabilitation. (Elec. Code, § 2166.7, subd. (f); Gov. Code, § 7920.535.)

Existing law provides that such voter registration confidentiality, if granted, shall be available for two years, and for an additional two years if a new request is granted. (Elec. Code, § 2166.7, subd. (c).)

Existing law provides that such voter registration confidentiality, if granted, shall be available for two years, and for an additional two years if a new request is granted. (Elec. Code, § 2166.7, subd. (c).)

This bill adds a tribal judge of a federally recognized California Indian Tribe to the definition of "public safety officer" for purposes of confidentiality of voter registration affidavits.

Existing law provides that any residence address in any record of the Department of Motor Vehicles (DMV) is confidential and shall not be disclosed to any person, except a specified government or law enforcement agency. (Veh. Code, § 1808.21, subd. (a).)

Existing law provides that the home addresses of retired judges and court commissioners shall be permanently withheld from public inspection, if confidentiality is requested, and the home addresses of specified surviving spouses and children, shall be withheld from public inspection for three years following the death of the judge or court commissioner. (Veh. Code, § 1808.4, subd. (c)(5).)

Existing law provides that the disclosure of a confidential home address of a judge or court commissioner that results in bodily injury to that judge, court commissioner, or their spouse or children, is a felony. (Veh. Code, § 1808.4, subd. (d).)

This bill adds a tribal judge of a federally recognized California Indian tribe to existing provisions of law that authorize specified persons to request DMV for confidentiality their home address.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Like local and state counterparts, tribal courts oversee a slew of legal cases that can touch upon very sensitive information. Misdemeanor cases, custody battles, and child support cases risk the chance of emotions becoming heightened and leading to threats and assaults on tribal judges. As the rates of court-targeted acts of violence increase at the state and federal level, California must bring to parity the same protections given to local, state, and federal judges to their counterparts servicing tribal courts across the state.

2. Existing Laws: Assault, Battery and Attempted Murder

Assault and battery are two similar but different offenses. Assault is defined as “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.” (Pen. Code, § 240.) Battery is defined as “any willful and unlawful use of force or violence upon the person of another.” (Pen. Code, § 242.) Assault is essentially attempted battery. (“Simple assault” is included in the offense of battery, and a conviction of the latter would subsume the assault. By definition one cannot commit battery without also committing a “simple” assault which is nothing more than an attempted battery. *People v. Fuller* (1975) 53 Cal. App. 3d 417.)

An example of assault would be if a person swung at another person without hitting them, whereas if the person did strike the other person, the conduct would become a battery.

Existing law generally punishes simple assault and battery by imprisonment not exceeding 6 months, or by both a fine (maximum of \$1,000 or \$2,000 respectively) and imprisonment. (Pen. Code, §§ 241 and 243.) However, assaults and batteries that are committed under certain circumstances are subject to higher misdemeanor penalties, and in some circumstances felony penalties. For example, the higher misdemeanor or county-jail eligible felony applies under existing law when the assault is committed against specified public officials, including the President, Vice President, the Governor or any state, prosecutors, public defenders, any local, state or federal judge, among others, in retaliation for, or to prevent the performance of the victim’s official duties. (Pen. Code, § 217.1, subd. (a).) The law also provides that every person who attempts to commit murder against any of those listed public officials in retaliation for or to prevent the performance of the victim’s official duties, shall be punished in state prison for a term of 15 years to life. (Pen. Code, § 217.1, subd. (b).)

This bill would make the assault of a tribal judge in retaliation for, or to prevent the performance of the judge's duties, punishable by imprisonment in county jail of no more than one year or by 16 months, 2 or 3 years in county jail. This bill would also provide that a person who attempts to murder a tribal judge in retaliation for, or to prevent the performance of the judge's duties, shall be confined in state prisons for 15 years to life.

As discussed in the above paragraph, local, state and federal judges are included in the existing law that provides increased punishment for assault or attempted murder in retaliation for, or to prevent the performance of the duties of specified public officials. This would specify that tribal judges are also included in that statute for increased penalties.

3. DMV Confidentiality of Personal Information

Vehicle Code section 1808.4 was added by statute in 1977 to provide confidentiality of home addresses to specified public employees and their families.

In 1989, Vehicle Code section 1808.21 was added to make all residence addresses contained within the Department of Motor Vehicle files confidential. Vehicle Code section 1808.21(a) states the following:

The residence address in any record of the department is confidential and cannot be disclosed to any person except a court, law enforcement agency, or other governmental agency, or as authorized in Section 1808.22 or 1808.23.

This section was further amended in 1994 to allow individuals under specific circumstances to request that their entire records be suppressed. Any individual who is the subject of stalking or who is experiencing a threat of death or great bodily injury to his or her person may request their entire record to be suppressed under this section. Upon suppression of a record, each request for information about that record has to be authorized by the subject of the record or verified as legitimate by other investigative means by the DMV before the information is released.

A record is suppressed for a one-year period. At the end of the one year period, the suppression is continued for a period determined by the department and if the person submits verification acceptable to the department that they continue to have reasonable cause to believe that they are the subject of stalking or that there exists a threat of death or great bodily injury to their person.

Under Vehicle Code sections 1808.4 and 1808.6 the home addresses of specific individuals are suppressed and can only be accessed through the Confidential Records Unit of the Department of Motor Vehicles. Comparatively, under Vehicle Code section 1808.21 the residence address portion of all individuals' records are suppressed but can be accessed by a court, law enforcement agency, or other governmental agency or other authorized persons.

This bill adds tribal judges to the list of persons who can request confidentiality under Vehicle Code section 1808.4.

4. Confidentiality of Voter Registration Information

Existing law authorizes any person filing affidavits of voter registration to request that their personal contact information appearing on affidavits of registration or any list or roster, be

declared confidential, upon order of a superior court showing good cause that life threatening circumstances exist to the person or their household. (Elec. Code, § 2166, subd. (a).) In addition, specified public safety officers such as state and federal judges, may request that their personal information on affidavits of registration be kept confidential, by submitting an application to a county election official that contains a statement, signed under penalty of perjury, that the person is a public safety officer and that a life threatening circumstance exists to the officer or a member of the officer's family. (Elec. Code, § 2166.7, subds. (a) & (b).) This would make this additional confidentiality avenue available to tribal judges by declaring tribal officers to be public safety officers.

In practice, tribal judges can already seek the confidentiality of the personal information contained in affidavits of registration. However, this bill would make it easier for tribal judges to secure such confidentiality, since public safety officers need only submit an application swearing that a life threatening circumstance exists, to be approved by a county elections official. In contrast, members of the public have to seek such confidentiality by securing an order of a superior court showing good cause that life threatening circumstances exist. Further, upon a successful application by a public safety officer, confidentiality of affidavit records is provided for two years and public safety officers can subsequently re-apply to maintain such confidentiality. Thus, this bill will make it easier for tribal judges to secure the confidentiality of their information in voter registration records, and will ensure the confidentiality of those records for at least two years, until a new request is filed.

5. Jurisdiction to Enforce Criminal Law in Indian Country under Public Law 280

Tribes are under the exclusive jurisdiction of the federal government, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas: Congress has granted limited jurisdictional authority to the federal (under the General Crimes Act, 18 U.S.C. § 1153 and the Major Crimes Act, 18 U.S.C. § 1152) and to states (under Public Law 280) and has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA, 25 U.S.C. § 1301–1303).

In 1953, Congress passed Public Law 280 which provided six states, including California, with civil and criminal jurisdiction over crimes occurring on tribal land, and gave other states the option to adopt such jurisdiction. As a result, California and Tribes have concurrent jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country. For example, if the offender is non-Indian, and the victim is non-Indian or Indian or it is a victimless crime the state generally has exclusive jurisdiction. (*Draper v. United States* (1896) 164 U.S. 240). Alternatively, if the offender is Indian, and the victim is Indian or non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.) Lastly, if the offender is Indian, and there is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (*Ibid.*)

Most crimes committed in California Indian Country are criminally prosecuted in state court, although Tribes can also prosecute the same crime in tribal court under tribal law, if the defendant is Indian. Notably, tribal courts may exercise special tribal criminal jurisdiction over all people, concurrent with the criminal jurisdiction of the federal government and the state, for the crime of assault of tribal justice personnel, even if neither the defendant nor the alleged victim is an Indian. (25 U.S.C § 1304, subds. (a)(1), (a)(5)(A), & (b)(4)(A).) This means that

both state and tribal courts may prosecute persons who assault or attempt to murder tribal judges, even where the defendant is not Indian.

This bill would add “tribal judges” to the existing provision of state law providing enhanced punishment for the crime of assault or attempted murder of specified public officials when done in retaliation against or to prevent the performance of that official’s official duties.

6. Arguments in Support

According to California Indian Legal Services:

California Tribal Judges are often faced with making decisions impacting child custody, protection orders, division of property and other highly charged litigant claims. However, unlike other judges, many Tribal Court Judges do not have law enforcement officers in their court room or other security protection. Due to Judges significant vulnerabilities, state laws have greater penalties for threats and assaults made against State and Federal Court Judges and also the protections limiting their personal information from being made public. Tribal Court Judges are no less vulnerable and deserve the same level of protection. This bill is crucial as it aims to rectify this disparity by providing equity for Tribal Judges who are integral to upholding the Tribe's sovereign right to operate their own judicial systems.

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