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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 2138                      **Hearing Date:** June 25, 2024  
**Author:** Ramos  
**Version:** June 13, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Peace officers: tribal police pilot project*

## HISTORY

**Source:** Yurok Tribe; California Indian Legal Services

**Prior Legislation:** AB 44 (Ramos, Ch. 638, Stats. of 2023)  
AB 1314 (Ramos, Ch. 476, Stats. of 2022)  
AB 3099 (Ramos, Ch. 170, Stats of 2020)  
AB 1507 (Hernandez, 2015), failed in the Senate  
SB 911 (Alarcon, 2002), not voted upon in Senate Public Safety

**Support:** California Faculty Association; Sycuan Band of the Kumeyaay Nation; Tule River Tribe

**Opposition:** None known

**Assembly Floor Vote:** 73 - 0

## PURPOSE

*The purpose of this bill is to establish a pilot program, to be managed by the Department of Justice and Commission on Peace Officer Standards and Training, which would confer upon certain tribal law enforcement officers the authority of a California peace officer on Indian land and elsewhere in the state under certain circumstances, as specified.*

*Existing federal law* establishes that Indian tribes are domestic dependent nations that exercise inherent sovereign authority, and are subject to plenary control by Congress, yet remain separate sovereigns pre-existing the Constitution. (*Michigan v. Bay Mills Indian Community* (2014) 572 U.S. 782, 788-789.)

*Existing federal law* provides that any Indian tribe shall have the right to organize for its common welfare. (25 U.S.C. § 476.)

*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* establishes the Bureau of Indian Affairs (BIA), which is responsible management of all Indian affairs and of all matters arising out of Indian relations. (25 U.S.C. §§ 1 through 68.)

*Existing federal law* states that the BIA is responsible for assisting in the provision of federal law enforcement services in Indian Country and authorizes the BIA to issue Special Law Enforcement Commissions (SLEC)s to tribal law enforcement officers. (25 U.S.C. §§ 2802 & 2803.)

*Existing federal law* limits the penalty that a tribal court may impose on a criminal defendant for a conviction to a term of imprisonment not to exceed 1 year or a fine of \$5,000. A tribal court may impose a term of imprisonment of 3 years or a fine not to exceed \$15,000 or both, as specified, if the person has previously been convicted of the same or comparable offense by any jurisdiction in the United States. Under no circumstance can the term of the sentence exceed 9 years. (25 U.S.C. § 1302.)

*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 specified crimes, including, assault of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and a violation of a protective order. A Tribe may not exercise this special jurisdiction if neither the defendant nor the victim is Indian. (25 U.S.C § 1304.)

*Existing federal law* guarantees that the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. (25 U.S.C. § 1303.)

*Existing California law* provides that the Attorney General (AG) is the chief law enforcement officer of the State. The AG shall have direct supervision over every law enforcement officers as may be designated by law. (Cal. Const. art. V, § 13.)

*Existing law* provides that a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws. (Cal. Const. art. XI, § 7.)

*Existing law* establishes the “Feather Alert,” which is a notification system designed to issue and coordinate alerts with respect to endangered indigenous people, specifically indigenous women or indigenous people, who are reported missing under unexplained or suspicious circumstances. (Gov. Code § 8594.13.)

*Existing law* authorizes cities and counties to enter into a contract with an Indian tribe to provide police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands. (Gov. Code, § 54981.7)

*Existing law* establishes the Tribal Assistance Program, requiring the DOJ to provide technical assistance 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, as specified. (Pen. Code § 11070, subd. (a).)

*Existing law* requires the DOJ, subject to an appropriations 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. (Pen. Code § 11070, subd. (b).)

*Existing law* authorizes a law enforcement agency or a court of a tribe to apply to the Attorney General for access to the California Law Enforcement Telecommunications System (CLETS), as specified, and provides that CLETS may connect and exchange traffic with the compatible systems of a tribal government, as provided. (Gov. Code, §15168.)

*Existing law* provides that any person or persons desiring peace officer status under existing law who, on January 1, 1990 were not entitled to be designated peace officers shall request the Commission on Peace Officer Standards and Training (POST) to undertake a feasibility study, as specified. (Pen. Code §§ 13540 – 13542.)

*Existing law* requires POST to establish a certification program for peace officers including several levels of certificate for the purpose of fostering professionalization, education, and experience necessary to adequately accomplish the general police service duties performed by peace officers (Pen. Code § 13510.1, subds. (a), (b).)

*Existing law* provides that any person who meets specified requirements in existing law and who otherwise meets all standards imposed by law on a peace officer is a peace officer. (Pen. Code §§ 830 – 832.18.)

*Existing law* provides that the authority of peace officers, as specified, extends to any place in the state as follows:

- As to a public offense committed or for which there is probable cause to believe has been committed within the political subdivision that employs the peace officer or in which the peace officer serves;
- If the peace officer has the prior consent of the chief of police or chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within a county;
- As to a public offense committed or for which there is probable cause to believe has been committed in the peace officer's presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense. (Pen. Code § 830.1.)

*Existing law* provides that whenever any person designated by a tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a

peace officer if they have completed the basic POST course. (Pen. Code, §§830.6, subd. (b), 832.6 subd. (a)(1).)

*This bill* sets forth various definitions used throughout its provisions:

- “Qualified entity” means the Blue Lake Rancheria, the Coyote Valley Band of Pomo Indians, and the Yurok Tribe of the Yurok Reservation.
- “Qualified member” means a chief of police who is appointed by, or a person who is regularly employed as a law enforcement, police, or public safety officer or investigator, by a qualified entity and who meets specified requirements and qualifications, and who has been designated by the qualified entity as a peace officer pursuant to the Tribal Assistance Program.
- “Indian Country” has the same meaning as in federal law.

*This bill* establishes the Tribal Police Pilot Program to operate from July 1, 2025 until July 1, 2028, under the direction of the Department of Justice and the Commission on Peace Officer Standards and Training.

*This bill* provides that, any qualified entity may notify DOJ that they wish to enroll in the program, and upon verification by POST that the qualified entity has complied with specified requirements, any qualified member of that qualified entity shall be deemed a peace officer, as specified.

*This bill* states that a person shall not be a qualified member unless the person completes and maintains all requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law. The tribe employing the peace officer must document the officer’s compliance with this provision and submit documentation to POST.

*This bill* requires a qualified entity enrolled in this pilot program to do all of the following:

- Enact and maintain in continuous force a law or resolution expressing their intent that their tribal officers be California peace officers and adopting any requirements prescribed by this bill;
- Adopt and maintain in continuous force for a period of no less than two years after the conclusion of the program, an ordinance or other enforceable policy that provides procedures comparable to the California Public Records Act (CPRA);
- Maintain and make available for public inspection, pursuant to ordinance or policy, any record related to misconduct by a person designated as a peace officer pursuant to the program, as specified, including any administrative record of the tribe specifically related to such conduct, for a period of no less than two years after the conclusion of the program;
- Adopt and maintain in continuous force an ordinance or other enforceable policy that provides procedures and remedies comparable to the Government Claims Act for any

claim arising from any actions or omissions of a tribal police officer acting as a California peace officer pursuant to the program;

*This bill* provides that the ordinance described above must include all of the following:

- A limited waiver of sovereign immunity against suit, liability, and judgment, as specified.
- An express agreement that the substantive and procedural laws of the State of California may govern any claim, suit, or regulatory or administration action, as specified.
- A requirement that the qualified entity shall cooperate with any inspections, audits, and investigations by the DOJ and POST for improper acts or omissions by tribal officers, including any sanction or discipline imposed by the department or POST, up to and including removal of the qualified entity from the program.
- A requirement that the qualified entity carry sufficient insurance coverage for the liability of the tribe arising from acts or omissions of tribal officers, which shall be determined by the DOJ in consultation with the tribe.

*This bill* additionally requires the qualified entity to do the following:

- Comply with requirements in existing law regarding the investigation of complaints by members of the public and other specified requirements related to POST.
- Submit all required documentation of compliance with these provisions to POST, as specified.
- Submit any data, statistics, reports, or other information requested by the DOJ for the monitoring and evaluation of the pilot program to the DOJ.
- Comply with other specified provisions of existing law related to submission of specified data to the DOJ and administration of local law enforcement agencies by DOJ.

*This bill* authorizes a qualified entity to establish a domestic violence death review team, as specified and defined in existing law.

*This bill* provides that, when a tribal officer designated as a peace officer pursuant to the program issues a citation for a violation of state law, the citation shall require the person cited to appear in the superior court of the county in which the offense was committed, and shall be submitted to the district attorney of that county.

*This bill* provides that any criminal charge resulting from a custodial arrest or citation issued by a person designated as peace officer pursuant to the program, while exercising the authority as a peace officer, shall be within the jurisdiction of the courts of the State of California.

*This bill* requires any official action taken by a person designated as a peace officer pursuant to this program, while exercising the authority as a peace officer, including, without limitation, any

detention, arrest, use of force, citation, release, search, or application for, or service of, any warrant, shall be taken in accordance with all applicable state and federal laws.

*This bill* provides that peace officer authority granted to any person pursuant to this program shall be automatically revoked on July 1, 2028.

*This bill* provides that the Attorney General, in coordination with POST, shall provide ongoing monitoring, evaluation, and support for the pilot program, as specified.

*This bill* authorizes a qualified entity to terminate their participation in the program, as specified, and authorizes the DOJ in coordination with POST to suspend or terminate the participation of a qualified entity for gross misconduct or for willful or persistent failure to comply with requirements.

*This bill*, by no later than July 1, 2027, requires the DOJ to prepare and submit an interim report to the Legislature, and by no later than January 1, 2029, requires the DOJ to submit a final report to the Legislature, both of which must include the impacts of the pilot program on case clearance rates, including homicide and missing persons cases, the impact of the pilot program on crime rates on Indian lands and surrounding communities, the impact of the pilot program on recruitment and retention of tribal police, a discussion of feasibility and implementation difficulties, and recommendations to the Legislature.

*This bill* creates the Tribal Police Pilot Fund in the State Treasury, any monies deposited into which shall be used to assist program participants, as specified.

*This bill* provides that its provisions shall not be construed to infringe upon the sovereignty of any Indian tribe nor their inherent authority to self-govern, including the authority to enact laws that govern their lands.

*This bill* provides that commencing on July 1, 2025, until July 1, 2028, a chief of police appointed by a qualified entity and meeting the requirements of a qualified member or a police officer, public safety officer, or investigator employed in that capacity by a qualified entity and meeting the requirements of a qualified member, is a peace officer.

*This bill* specifies that the authority of a peace officer designated pursuant to its provisions extends to any place within the territorial boundaries of Indian country of the employing tribe, in accordance with and subject to any limitations of Public Law 280. (see Comment 2.)

*This bill* provides that the authority of a peace officer designated pursuant to its provisions may also extend to any place in the state, under any of the following circumstances:

- At the request of a state or local law enforcement agency.
- Under exigent circumstances involving an immediate danger to persons or property, or of the escape of a perpetrator.
- For the purpose of making an arrest, when a public offense has occurred, or there is probable cause to believe a public offense has occurred, within the Indian country of the tribe that employs the peace officer, and with the prior consent of the chief of police or

chief, director, or chief executive officer of a consolidated municipal public safety agency, or person authorized by that chief, director, or officer to give consent, if the place is within a city, or of the sheriff, or person authorized by the sheriff to give consent, if the place is within an unincorporated area of a county.

- Notwithstanding the bullet above, when the peace officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate state law and the violation occurred within the Indian country of the tribe that employs the peace officer.
- When delivering an apprehended person to the custody of a law enforcement authority or magistrate in the city or county in which the offense occurred.

*This bill* provides that the above provisions shall only become operative upon an appropriation of funds by the Legislature to fulfill its purposes, and in any case shall remain in effect until July 1, 2031 and as of that date is repealed.

*This bill* states that peace officers described above shall be eligible to participate in, and subject to the applicable requirements of, the certification program for peace officers run by POST.

*This bill* provides that any police officer, public safety officer, or investigator who serves as a peace officer under this bill's pilot program shall obtain the basic certificate issued by POST within 6 months after the bill goes into effect or 18 months after their date of employment, whichever is later, in order to continue to exercise the powers of a peace officer.

*This bill* provides that any chief of police participating in the pilot program, as a condition of continued employment, shall obtain POST's basic certificate within 6 months after the bill goes into effect or two years after appointment, whichever is later.

*This bill* provides that the above provisions shall only become operative upon an appropriation of funds by the Legislature to fulfill its purposes, and in any case shall remain in effect until July 1, 2031 and as of that date is repealed.

*This bill* sets forth various legislative findings and declarations regarding California tribes, tribal sovereignty, and murdered and missing indigenous women and people, including a legislative declaration that the authority over tribal police officers and their employing tribes granted to the Attorney General by this bill is not intended to supersede or infringe upon the authority of sovereign tribal governments.

## COMMENTS

### 1. Need for This Bill

According to the Author:

The devastating issue of MMIP has caused untold tragedy that often becomes long lingering ripples of grief and further tragedy. We can reduce the number of cases through greater collaboration by law enforcement, tribal communities, mental health and other service providers to ensure that victims and their loved ones receive the

support and attention they need to overcome these acts of violence. Providing California Peace officer status to Tribal police will strengthen public safety in our communities, and allow us to start making progress to finding our missing loved ones and preventing tragedy.

## 2. California Tribes, Tribal Sovereignty and Public Law 280

California has 109 federally recognized tribes including nearly 100 separate reservations and Rancherias spread out across the state, as well as several non-federally recognized tribes. California's tribes are as small as five members and as large as 5,000 members, and according to the 2010 U.S. Census, California represents 12 percent of the total Native American population (approximately 720,000 individuals), and over one-half of the state's Native American population is composed of individuals (and their descendants) who were relocated to large urban areas as part of the federal government's termination policy.<sup>1</sup>

Tribes are sovereign entities and have exclusive inherent jurisdiction over their territory and members, but not necessarily over non-tribal members even within tribal territory. However, all tribes are under the exclusive and plenary jurisdiction of the United States Congress, which has authority to restrict tribal jurisdiction and sovereignty in a number of ways. A long history of United States Supreme Court cases has established several guiding principles regarding Congress' exercise of its jurisdiction over tribal affairs:

First, Congress has plenary power in the exercise of its Indian affairs duties. Second, the United States owes a duty of protection to Indian nations and tribal members akin to a common law trust. Third, Indian nations retain inherent sovereign powers, subject to divestiture only by agreement or by Congress. Fourth, state law does not apply in Indian country absent authorization by Congress. Finally, Congress must clearly state its intention to divest tribal sovereignty.<sup>2</sup>

The federal government has exercised this plenary power a number of times to limit tribal jurisdiction: Congress has granted limited jurisdictional authority to the federal government and to the States in certain areas and has imposed limits on tribal courts through the Indian Civil Rights Act.<sup>3</sup>

In 1953, Congress passed Public Law 280, which altered this general jurisdictional framework and the relationship between tribal lands and six states, including California. Specifically, PL 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in these states, and gave several other states the option to adopt this jurisdictional framework. Thus, PL-280 authorized California to prosecute most crimes that occurred on tribal land, subject to various exceptions, but crucially, the measure did *not* divest tribes of jurisdiction, criminal or otherwise.<sup>4</sup> That is to say, the State of California and California tribal governments

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<sup>1</sup> "California Tribal Communities – FAQs." California Courts. [California Tribal Communities – tribal projects](#)

<sup>2</sup> "A Short History of Indian Law in the Supreme Court." American Bar Association. 1 October 2014. [A Short History of Indian Law in the Supreme Court \(americanbar.org\)](#)

<sup>3</sup> Major grants of authority to the federal government were accomplished under the General Crimes Act of 1817, (18 U.S.C. § 1153) and the Major Crimes Act of 1885 (18 U.S.C. § 1152), and the states were granted authority under Public Law 280; the Indian Civil Rights Act is codified at 25 U.S.C. §1301 – 1303.

<sup>4</sup> For additional information, see [Jurisdiction in California Indian Country; Understanding Public Law 83-280 \(PL 280\) | State of California - Department of Justice - Office of the Attorney General](#)



have concurrent jurisdiction over criminal offenses committed by or against Indians in the areas that comprise Indian Country.<sup>5</sup> Understanding which entity (tribal or State) has jurisdiction over a specific crime under the PL-280 framework can be complicated, but the following table serves as a general reference<sup>6</sup>:

Offender	Victim	Jurisdiction (jx)
Non-Indian	Non-Indian	State jx is exclusive of federal and tribal jurisdiction unless certain specific federal laws apply.
Non-Indian	Indian	Generally, state has jx exclusive of federal and tribal jx. However, under Violence Against Women Act there can be concurrent tribal jx, and possibly Federal jx if interstate provisions apply. Federal jx for certain offenses including interstate domestic violence.
Indian	Non-Indian	State has jx exclusive of federal government (unless federal government has reassumed jx under the Tribal Law and Order Act <sup>7</sup> ) but tribe may exercise concurrent jx. Federal jx for certain federal offences including interstate DV.
Indian	Indian	Generally, state has jx exclusive of federal government (unless federal government has reassumed jx under Tribal Law and Order Act, or unless specific federal crimes are involved) but tribe may exercise concurrent jx.
Non-Indian	Victimless	State jx is exclusive unless federal jx has been reassumed under Tribal Law and Order Act.
Indian	Victimless	There may be concurrent state, tribal, and federal jx if reassumption under Tribal Law and Order Act. There is no state regulatory jx.

According to the findings and declarations set forth in this bill, approximately 27 tribal governments in California have exercised their inherent authority and established law enforcement agencies, and there are 22 tribal courts statewide serving 40 tribes. Since its enactment, the PL-280 framework has drawn sharp criticism and has been a source of jurisdictional confusion in many cases, which may help explain why state law enforcement responses to criminal activity on Indian land have been inconsistent and at times, inadequate.

### 3. Tribal Deputation Agreements

Under both federal and state law, tribes are authorized to enter into “deputation agreements” with state and local governments and law enforcement agencies. In the federal context, the BIA, which is charged with the enforcement of federal law in Indian Country, can delegate that responsibility to tribal police through a written contract, which, once in place, can imbue tribal

<sup>5</sup> This bill adopts federal law’s definition of “Indian Country,” which is “all land within the limits of any Indian reservation under the jurisdiction of the United States Government.”

<sup>6</sup> This table was adapted from the following source: [Jurisdiction in California Indian Country](#)

<sup>7</sup> Under the Tribal Law and Order Act (TOLA, signed by President Obama in 2010), tribal governments were authorized to request that the U.S. Department of Justice resume federal criminal jurisdiction over that tribe’s land, effectively establishing concurrent prosecutorial jurisdiction between the states and federal government.

officers with federal authority through “special law enforcement commissions,” or SLECs.<sup>8</sup> SLEC officers can be authorized to act as state and local peace officers pursuant to written deputation agreements between individual tribes and specific law enforcement agencies, which set forth the scope of the tribal police officers’ authority and the conditions they must adhere to. Under California law, these agreements can generally take one of two forms: cities and counties may enter into contracts with tribes to provide police or sheriff protection services for the Indian tribe either solely on Indian lands, or on the Indian lands and territory adjacent to those Indian lands (Gov. Code, § 54981.7), *or* local law enforcement agency chiefs may deputize or appoint a SLEC officer as a California peace officer who may exercise specified powers including submit police reports to district attorneys, make arrests on non-tribal land, and testify in federal and state courts, among other things, provided the officer completes specified training requirements through POST.<sup>9</sup>

Generally, deputation agreements include provisions related to the roles and responsibilities of the respective agencies in regards to matters such as search warrants, booking and dispatch, detention and jailing, citizen complaints, emergency vehicles, field training, ongoing and continued POST training, cultural and diversity training, police reporting, police records, lines of communications, insurance and indemnification clauses, provisions for access to criminal information systems, waivers to sovereign immunity, dispute resolution and more.<sup>10</sup>

According to the Author, deputation agreements are inadequate to meet the law enforcement needs of many tribes:

While some tribal police agencies have developed agreements with county law enforcement agencies to allow for cooperation in enforcement of California laws on tribal lands, these agreements are subject to the discretion of individual officer holders, are not guaranteed in statute, and can change at any time. Many Tribes do not have positive relationships with county law enforcement, given historical trauma and even recent events. Development of an MOU with local law enforcement is not an option for many Tribes.<sup>11</sup>

#### 4. Recent Legislation – Tribal Assistance Program and Tribal CLETS Access

Recognizing the severity of the murdered and missing indigenous person (MMIP) crisis in California, the Author has carried several measures aimed at improving law enforcement capabilities on tribal lands, primarily by facilitating cooperation between tribal and California law enforcement agencies. In 2020, the Governor signed AB 3099 (Ramos, Ch. 170, Stats. of 2020), which required the DOJ to provide technical assistance to local law enforcement agencies

<sup>8</sup> 25 U.S.C §§2801 et. seq; *United States v. Fowler* (9th Cir. 2022) 48 F.4th 1022, 1026

<sup>9</sup> See Penal Code §§ 830.6 (b), 830.8.

<sup>10</sup> For examples of deputation agreements, see [Tribal-HoplandMendocinoCrossDepAgreement.pdf \(ca.gov\)](#) and [Dep Agr Table Mountain.pdf \(standupca.org\)](#)

<sup>11</sup> For instance, in Humboldt County in 2015, the county sheriff unilaterally suspended a twenty-year-old cooperative agreement with the Hoopa Valley Tribe, revoking the peace-officer powers of the Hoopa Valley Tribal Police Department. Since the failure of the cooperative agreement, the county increased its presence on the reservation and the degraded trust between the parties made a renewed agreement unlikely. *Developments in the Law – Indian Law: Chapter Two: Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects onto State Land* (April 2016) 129 Harv. L. Rev. 1685. [Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects onto State Land - Harvard Law Review](#)

that have Indian lands within or abutting their jurisdictions, and to tribal governments with Indian lands, including those with and without law enforcement agencies. AB 3099 also required

the DOJ 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. In 2022, AB 1314 (Ramos, Ch. 476, Stats. of 2022) established the “Feather Alert,” an emergency alert system similar to the “Amber Alert” but designed specifically to help locate missing Indigenous people. And last year, The Author of this measure authored AB 44 (Ramos, 638, Stats. of 2023), which granted tribal courts and law enforcement agencies access to the California Law Enforcement Telecommunications System (CLETS).

## 5. Effect of This Bill

In 2001, the Legislature considered SB 911 (Alarcon), also known as the California Tribal Justice Act, which would have given tribal police officers the same status as California peace officers in specified circumstances, but was never voted upon after being referred to this committee.<sup>12</sup> This bill renews the effort to grant tribal police officers the authority of California peace officers, and from July 1, 2025 until July 1, 2028, creates a pilot program to that effect under the Department of Justice and POST, as provided in detail below.

### *Program Requirements – Tribes*

Under the bill, only 3 specified tribes are deemed “qualified entities” that may participate in the pilot program: The Blue Lake Rancheria, the Coyote Valley Band of Pomo Indians, and the Yurok Tribe of the Yurok Reservation. In order to participate in the program, these tribes must adopt and maintain three distinct ordinances: *first*, an ordinance expressing their intent that tribal officers be California peace officers within the pilot program, *second*, an ordinance, maintained for no less than two years after the conclusion of the pilot program, that provides procedures and remedies comparable to the California Public Records Act; and *third*, an ordinance that provides procedures and remedies comparable to the Government Claims Act for any claim arising from any actions or omissions of a tribal police officer acting as a California peace officer, with specified contents. Related to the second ordinance above, the bill requires the tribe to make specified peace officer records available for public inspection for no less than 2 years after the conclusion of the program, consistent with what would be available under existing law for California peace officers. In addition, the bill requires the tribes to comply with existing law related to civilian complaints, submit all required documentation to POST, submit data, statistics, and reports requested by the DOJ for pilot program monitoring purposes, and comply with other existing recordkeeping requirements.

In addition, the bill authorizes participating tribes to establish domestic violence death review teams, which California law enforcement agencies are authorized to establish to assist local agencies in identifying and reviewing domestic violence deaths, and often include experts in DV-related topics.<sup>13</sup> Another provision of the bill permits a participating tribe to terminate their participation in the program at will, though specified public records and government claims provisions would remain in place. The bill also establishes a process whereby the DOJ and POST may suspend or terminate a tribe’s participation in the program.

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<sup>12</sup> SB 911 was ultimately shelved due to disagreements over liability insurance requirements for the tribes.

<sup>13</sup> See Penal Code §§ 11163.3 to 11163.5, inclusive.

Under existing law, effective July 7, 2000, any person or persons desiring California peace officer status who, on January 1, 1990, were not entitled to be designated as peace officers are required to request POST to conduct a feasibility study regarding designating those persons as peace officers.<sup>14</sup> Though this may be an antiquated prerequisite to peace officer status and may not have been intended to apply tribal entities seeking peace officer status, it is nevertheless existing law, and it is unclear whether the “qualified entities” authorized to participate in the pilot program under the bill have satisfied this requirement.

#### *Program Requirements – Officers*

POST was established by the Legislature in 1959 to develop minimum recruitment and training standards for California peace officers. As of 1989, all peace officers in California are required to complete an introductory course of training prescribed by POST, and demonstrate completion of that course by passing an examination. According to the POST Web site, the Regular Basic Course Training includes 43 separate topics, ranging from juvenile law and procedure to search and seizure, taught over the course of a minimum of 664 hours of training.<sup>15</sup> In 2021, the Legislature passed sweeping legislation requiring POST to create a new, mandatory certification process for peace officers (Senate Bill 2, Bradford, Ch. 409, Stats. of 2021.) SB 2 directed POST to create a certification program for peace officers, who must receive a proof of eligibility and a basic certificate in order to serve in that capacity.<sup>16</sup> Additionally, SB 2 provided a new mechanism by which POST may investigate and review allegations of “serious misconduct” against an officer.

This bill mandates that in order to participate in the pilot program, tribal officers must obtain POST’s basic certificate within 6 months after the operative date of the bill or within 18 months after their date of employment, and are otherwise subject to the requirements of the certification program. Further, the bill contains a blanket provision stating that an officer is not eligible to participate unless they complete and maintain all applicable requirements for the appointment, training, education, hiring, eligibility, and certification required for peace officers under state law, including passing the course of basic training provided by POST. This also subjects participating officers to the decertification processes enacted by SB 2. Moreover, under the bill, any official action taken by a peace officer operating under the program (including detention, arrest, use of force, search, etc.) shall be taken in accordance with all applicable state and federal laws.

#### *Powers Conferred Upon Participating Officers (aka “qualified members”)*

If a participating tribe and an eligible officer meet all of the requirements set forth above, the bill deems the tribe a “qualified entity,” and deems the officer a “qualified member.” The authority of a peace officer designated pursuant to the bill extends to any place within the territorial boundaries of the Indian country of the employing tribe, and as such, a qualified member has full authority to enforce state law against both Indians and non-Indians within the geographic boundaries of the tribe’s lands. Additionally, the bill grants qualified members full authority to enforce state law against both Indians and non-Indians anywhere in the state, but only under the following circumstances:

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<sup>14</sup> Penal Code §13540

<sup>15</sup> <http://post.ca.gov/regular-basic-course-training-specifications.aspx> ; for additional info

<sup>16</sup> Penal Code § 13510.1; for more information on certification, see <https://post.ca.gov/Certification>

- At the request of a state or local law enforcement agency
- Under exigent circumstances involving an immediate danger to persons or property, or the escape of a perpetrator.
- For the purpose of making an arrest when there exists probable cause to believe an offense has occurred within Indian country of the employing tribe; or, with the permission of a chief of police or county sheriff, within a city or an unincorporated area of a county, respectively.
- When the peace officer is in hot pursuit or close pursuit of an individual that the officer has reasonable suspicion has violated or attempted to violate the law within Indian country.
- When delivering an apprehended person to the custody of another law enforcement agency, as specified.

With regard to bullet 3 above, the analysis prepared by the Assembly Committee on Public Safety suggest that the language of the bill would qualified members broader arrest authority than all other California peace officers, as existing law requires that to make a warrantless non-felony arrest, the offense must occur within the officer's presence, whereas the bill is devoid of this presence requirement.<sup>17</sup> As the Assembly Public Safety analysis points out, authorizing a tribal officer to effectuate an arrest they did not observe anywhere in the state would have serious constitutional implications.<sup>18</sup> While it is unlikely, given other language in the bill requiring qualified members to act in accordance with all applicable state and federal laws, amending the bill to include a cross-reference to the presence requirement in Penal Code §836 would likely remove any ambiguity.

## 6. Related Legislation

AB 2695 (Ramos) requires specified data collected by law enforcement and report to the DOJ to be disaggregated by whether an incident occurred in Indian Country, as defined. AB 2695 is set to be heard along with this bill on June 25.

AB 2279 (Cervantes) establishes the Missing and Murdered Indigenous Persons Justice Program within the Department of Justice, and sets forth the program's responsibilities, which include publishing data on the number of and facts about cases involving murdered and missing indigenous persons. At the time this analysis was finalized, that bill was set to be heard in this committee on June 18.

## 7. Amendments to Be Taken in Committee

The Author is taking amendments in committee to modify the timeline related to the certificate requirement, mandating that officers complete at 12-month probationary period prior to obtaining the basic certificate, but that in no case may the officer obtain the certificate later than

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<sup>17</sup> See Penal Code §836

<sup>18</sup> Such authority would clearly run afoul the Fourth Amendment's protection against unreasonable searches and seizures, the constitutional source of the probable cause requirement.

24 months after his or her employment. This appears to be consistent with existing POST regulations that apply to California law enforcement agencies.<sup>19</sup>

Additionally, the author has agreed to take a clarifying amendment addressing the issue raised in Comment 5 above regarding the arrest authority of qualified members. The amendment will include a cross reference to existing law defining the scope of arrest authority possessed by California peace officers.

## **8. Argument in Support**

According to the Yurok Tribe, which would be authorized to participate in the bill's pilot program:

California has the largest population of Native Americans of any state in the United States and the state is facing increasing public safety challenges and the crisis of Missing and Murdered Indigenous Persons (MMIP). Indigenous Persons, especially Indigenous Women and Girls, are disproportionately affected by violence, human trafficking, and murder, and become “missing” at much higher rates than people of other racial groups.) California has the fifth largest caseload of MMIP. More than 4 in 5 American Indian and Alaska Native women have experienced violence in their lifetime and more than 1 in 3 in the last year. Additionally, 1 in 130 Native American children likely go missing each year. AB 2138 will reform California law, which currently denies California tribal police officers the recognition of peace officer status if certain requirements are met. Thirteen states and the federal government provide a mechanism for tribal police to have peace officer status, as long as certain requirements are met. However, California does not, which leaves Tribal Police officers, especially those in rural areas, unable to pursue many issues on and off the reservation. As a result, Tribal communities, families, and victims also go unprotected, contributing to the MMIP crisis. State recognition would bring parity and equity to Tribal police, communities, families, and victims of crime. It would also strengthen Tribal Police, who are trusted members of the community who utilize a “community policing” model. And studies have shown that public safety improves when Tribal Nations have the resources to enforce their own laws and to protect their people. The Yurok Tribe encourages your support AB 2138 (Ramos) because this bill will combat the crisis of MMIP by improving public safety in tribal communities.

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<sup>19</sup> Cal. Code of Regulations, Title 11, Div. 2, Art. 4, §1202.