SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No: AB 44 **Hearing Date:** July 11, 2023
Author: Ramos
Version: June 14, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: ***California Law Enforcement Telecommunications System: tribal police***

HISTORY

Source: Yurok Tribe

Prior Legislation: AB 1314 (Ramos, Ch. 476, Stats. of 2022)
SB 1000 (Becker, 2022), held in Assembly Appropriations
AB 3099 (Ramos, Ch. 170, Stats. of 2020)
AB 1854 (Frazier, 2020), not heard in Assembly Public Safety
AB 1507 (Hernandez, 2015), failed in the Senate
SB 1460 (Committee on Human Services, Ch. 772, Stats. of 2014)
SB 911 (Alarcon, 2001), not heard in Senate Public Safety

Support: Bakersfield American Indian Health Project; Cahuilla Ban of Indians; Cahuilla Consortium Victims Advocacy Program; California Indian Legal Services; Cher-ae Heights Community of the Trinidad Rancheria; Habematolel Pomo of Upper Lake; Peace Officers Research Association of California; Picayune Rancheria of Chukchansi Indians

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to grant qualified tribal law enforcement agencies and tribal courts access to the California Law Enforcement Telecommunications System (CLETS).

Existing law establishes the Legislature's intent to provide an efficient law enforcement communications network available to all public agencies of law enforcement, and that such a network be established and maintained in a condition adequate to the needs of law enforcement. (Gov. Code §15151).

Existing law requires the Department of Justice (DOJ) to maintain a statewide telecommunications system of communication for the use of law enforcement agencies (CLETS), and provides that CLETS shall be under the direction of the Attorney General, and shall be used exclusively for the official business of the state and any city, county, city and county, or other public agency. (Gov. Code §§15152, 15153).

Existing law requires the Attorney General to appoint an advisory committee (hereinafter, the "CLETS Committee") on CLETS to advise and assist them in the management of the system with respect to operating policies, service evaluation, and system discipline, as specified. (Gov. Code §15154).

Existing law provides that the CLETS Committee shall consist of representatives from the following organizations:

- Two representatives from the California Peace Officers' Association.
- One representative from the California State Sheriffs' Association.
- One representative from the League of California Cities.
- One representative from the County Supervisors Association of California.
- One representative from the Department of Justice.
- One representative from the Department of Motor Vehicles.
- One representative from the Office of Emergency Services.
- One representative from the Department of the California Highway Patrol.
- One representative from the California Police Chiefs Association. (Gov. Code §15155).

Existing law provides that the CLETS Committee shall meet at least twice a year at a time and place to be determined by the AG and the chairman, and that all meetings of the committee and all hearings held by the committee shall be open to the public. (Gov. Code §15158 & 15159).

Existing law requires the Attorney General to adopt and publish the operating policies, practices and procedures, and conditions of qualification and membership, of CLETS. (Gov. Code §15160, subd. (a).).

Existing law provides that no subscribers to the system shall use information other than criminal history information transmitted through the system for immigration enforcement purposes, as defined. (Gov. Code, § 15160, subd. (b)(1).)

Existing law requires any inquiry for information other than criminal history information submitted through the system to include a reason for the initiation of the inquiry. (Gov. Code, § 15160, subd. (b)(2).)

Existing law permits the AG to conduct investigations, inspections, audits to monitor compliance, and to review and inspect case files and any records identified in the investigation process to substantiate a reason given for accessing information other than criminal history information in the system. (Gov. Code, § 15160, subd. (b)(2).)

Existing law requires the DOJ to provide a basic telecommunications network consisting of no more than two relay or switching centers in the state and circuitry and terminal equipment in one location only in each county in the state. (Gov. Code §15161).

Existing law requires that CLETS provide service to any law enforcement agency qualified by the CLETS advisory committee which, at the agency's own expense, desires connection through the county terminal. (Gov. Code §15163).

Existing law provides that the system shall be maintained at all times with equipment and facilities adequate to the needs of law enforcement, and that the CLETS Committee shall recommend to the AG any improvements of the system to meet the future requirements of the subscribers, as specified. (Gov. Code §15164).

Existing law makes it a felony to steal, remove, secrete, destroy, mutilate, deface, alter or falsify any record, map, book, or any paper or proceeding of any court, including CLETS material. (Gov. Code §6200).

Existing law provides that it is a misdemeanor for any person who is authorized by law to receive a record or information obtained from a record to knowingly furnish the record or information to a person not authorized by law to receive the record or information. (Pen. Code, §§ 11142, 13303.)

This bill sets forth various findings and declarations related to murdered and missing indigenous persons and the importance of tribal access to CLETS.

This bill provides that the CLETS Committee shall include one representative from a federally recognized Indian tribe that is a system subscriber.

This bill provides that the system may connect and exchange traffic with compatible systems of a tribe, as provided.

This bill authorizes a law enforcement agency of a tribe or tribal court to apply to the Attorney General for access to the system, and requires the Attorney General to provide system access to any law enforcement agency of a tribe or tribal court that has met specified qualifications.

This bill specifies that system access shall not be at the sole expense of the tribe.

This bill provides that the Attorney General shall deem a tribe that has applied for system access to be qualified only if the governing body of that tribe has enacted or adopted a law, resolution or ordinance, which shall be maintained in continuous force, that provides for all of the following:

- The tribe expressly waives its right to assert its sovereign immunity from suit, regulatory or administrative action, and enforcement of any ensuing judgment or arbitral award, for any and all claims arising from any actions or omissions of the tribe, including its officers, agents and employees, when acting within the scope of their authority and duty, arising out of, connected with, or related to, the system.

- The tribe expressly agrees that the substantive and procedural laws of the State of California shall govern any claim, suit, or regulatory or administration action, that the obligations, rights, and remedies shall be determined in accordance with such laws, and

that the courts of the State of California or of the federal government, as applicable, shall have exclusive jurisdiction.

- The tribe agrees to cooperate with any inspections, audits, and investigations by the Department of Justice for improper use or compliance with the operating policies, practices, and procedures, including any sanction or discipline imposed by the department, up to and including removal of system access.

- The tribe and its agencies, entities, or arms, including any officers, agents, and employees of the tribe when acting within the scope of their authority and duty, shall comply with the laws of the State of California relating to the use of records and information from the system, as specified.

This bill provides that the Director of General Services shall determine the charges to be paid by a tribe to the department for system access, including any initial setup charges and any ongoing charges for access, and that these charges shall be reasonably similar to those imposed on other system subscribers.

This bill defines "tribe," for the purposes of its provisions, as a federally recognized Indian Tribe whose territorial boundaries lie within the State of California and any agencies, entities, or arms of the tribe, as applicable, either together or separately.

This bill defines "sovereign immunity" means immunity from suit or action of the tribe of the tribe and its agencies, entities, or arms, including the officers, agents, and employees of the tribe when acting within the scope of their authority and duty.

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.

2. California Tribes and Tribal Sovereignty Generally

California has 110 federally recognized tribes including nearly 100 small reservations and Rancherias spread out across the state, as well as several non-federally recognized tribes. 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.[1]

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[1] "California Tribal Communities – FAQs." California Courts. [California Tribal Communities – tribal projects]

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. 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. Thus, PL-280 authorized the state 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.[2] According to the findings and declarations set forth in this bill, approximately 26 tribal governments in California have established law enforcement agencies, and there are 22 tribal courts statewide. Since its enactment, the PL-280 framework has been a source of jurisdictional confusion in many cases, and continues to raise questions about its applicability and effectiveness.[3]

In 2010, President Barack Obama signed The Tribal Law and Order Act (TOLA) in an effort to address rising crime on tribal lands, and decrease violence against indigenous people. Under TOLA, 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. 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.[4]

3. Murdered and Missing Indigenous People (MMIP)

For Native Americans and Alaska Natives, rates of murder, rape, and violent crime are all higher than the national averages. This crisis is especially acute among Native American and Alaska Native women and girls. A 2016 study by the National Institute of Justice (NIJ) found that more than four in five American Indian and Alaska Native women (84.3%) have experienced violence in their lifetime, including 56.1 percent who have experienced sexual violence. That year, the National Crime Information Center reported that there were 5,712 reports of missing American Indian and Alaska Native women and girls, though only 116 cases were logged into the federal DOJ's missing person's database.[5] According to materials provided by the Author, one in 130 Native American Children are likely to go missing each year, and indigenous women go missing and are murdered at rates higher than most other ethnic groups in the United States.[6]

California is not immune from this crisis. According to this bill's findings and declarations, California has the fifth largest caseload of missing and murdered Indigenous women and people. A report published in 2020 by the Sovereign Bodies Institute detailed the lack of scrutiny and

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[2] 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

[3] See, for instance: Helland, Sophia. "A Broken Justice System: Examining the Impact of the Tribal Law and Order Act of 2010 and PL-280." April 2018. A Broken Justice System: Examining the Impact of the Tribal Law and Order Act of 2010 and Public Law 280 | The Rose Institute of State and Local Government

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

[5] Missing and Murdered Indigenous People Crisis | Indian Affairs (bia.gov); https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf

[6] https://www.cnn.com/2019/04/09/us/native-american-murdered-missing-women/index.html ; https://www.acf.hhs.gov/sites/default/files/documents/ana/ioas_signed_tab_a_final_acf_framework_10_27_20pdf_002.pdf

data surrounding 105 cases involving missing and murdered Indigenous women and girls across northern California: the report found that of the cases classified as murders, law enforcement solved only 9%, meaning that murders of indigenous women were about 7 times less likely to be solved than homicides involving all other victims.[7] In 2021, the California Department of Justice held a first-of-its-kind event entitled "Missing in California Indian Country" in an effort to elevate California's response to the murdered and missing indigenous person's crisis. Since then, the state's DOJ has continued to hold these events around the state, and describe them as follows:

> They, in part, serve as critical public safety events for tribal communities and aim to elevate the state's response to the Missing Murdered Indigenous Persons crisis (MMIP). These events will allow for loved ones to report an individual missing, receive an update on an active missing person's case, and/or provide a DNA sample for inclusion in the DOJ's Unidentified Persons Database. These regional events will be developed and planned in collaboration with the tribal governments, within the respected regions, to be most responsive to the region's tribal community's needs. Together, local, state, tribal and federal justice partners will come together for these events to share critical information, resource availability, and partnership in addressing the MMIP crisis in California.[8]

4. CLETS and Effect of This Bill

Implemented in the 1970's, the California Law Enforcement Telecommunications System (CLETS) is a data interchange network administered by the California Department of Justice (DOJ). CLETS provides law enforcement and criminal justice agencies access to databases maintained by state and federal agencies, and allows for the exchange of administrative messages to agencies within California, other states, and Canada. Its primary function is to provide law enforcement with individuals' criminal records, often in real time as officers conduct investigations and respond to calls in the field. CLETS also provides information on restraining orders, warrants, drivers' license and vehicle registration data, and can access other state and national databases sponsored by the Federal Bureau of Investigation.

Given the sensitivity of the information contained in its databases, access to and use of CLETS is heavily regulated and restricted. Several provisions of existing law impose penalties for misuse of CLETS information – the DOJ's manual on CLETS Policies, Practices and Procedures (PPP) defines system misuse as "CLETS information obtained or provided outside the course of official business; a 'right to know' and the 'need to know' must be established. The 'right to know' is defined as 'authorized access to such records by statute' and the 'need to know' is defined as 'the information is required for the performance of official duties or functions.'"[9]

Tribes have only recently begun to obtain access to state and national criminal databases. In August 2015, the United States DOJ launched the Tribal Access Program for National Crime Information (TAP), which provided selected federally recognized tribes access to national crime

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[7] Unsolved cases: California's missing indigenous women - CalMatters
[8] Missing in California Indian Country - Regional Events | State of California - Department of Justice - Office of the Attorney General
[9] "CLETS Policies, Procedures and Practices – Ch. 1.10.1," p. 44. CAC Approved CLETS Policies Practices and Procedures dated 12/2019 ; Penal Code §§ 11141-11143 and 13302-13304 set forth the penalties for misuse of state and local summary criminal history information. Gov. Code § 6200 sets forth the felony penalties for misuse of CLETS information.

information systems for federally authorized criminal and non-criminal purposes.[10] Additionally, in 2014, the California Legislature passed SB 1460 (Committee on Human Services, Ch. 772, Stats. of 2014), which gave federally recognized tribes and tribal agencies the ability to receive both state and federal summary criminal history and the authority to conduct their own background checks, including criminal and child abuse background checks, but only in the limited context of developing housing projects known as Tribally Approved Homes.

Currently, some tribal police have access to CLETS and other criminal databases via federally authorized Special Law Enforcement Commissions, or SLECs, which grant tribal police certain powers possessed by peace officers of a local jurisdiction. SLEC officers are commonly authorized to act as federal, state and local peace officers pursuant to "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. In addition to permitting access to CLETS, deputation agreements often authorize SLEC officers to submit police reports to district attorneys, make arrests on non-tribal land, and testify in federal and state courts, among other things.[11]

However, tribal access to CLETS via these agreements is limited and inconsistent. According to the Author, the lack of real-time tribal access to California criminal offender information via CLETS has significant, and often deadly, public safety consequences:

> Tribal police and courts also currently do not have access to the California Law Enforcement Telecommunications System (CLETS) to enter, verify, and update missing person's information or receive vital officer safety information while tribal police officers are in the field. Tribal law enforcement and courts are therefore unable to search and access in real-time the criminal history, outstanding warrants and/or restraining orders related to specific individuals and cases. Without tribal access to CLETS, tribal courts and tribal law enforcement cannot enter domestic violence protective orders, emergency protective orders, or other restraining orders, limiting the ability of county and state law enforcement to protect tribal people.

This bill authorizes any federally recognized California tribe to make an application to the California Attorney General for CLETS access, and requires the Attorney General to grant access to any tribe that has passed a law, resolution or ordinance that contains several specific provisions. Under the bill, that law must waive tribal sovereign immunity from any lawsuit or administrative action arising out of their use of CLETS, expressly agree to the application of California law and jurisdiction of California courts regarding CLETS-related disputes, expressly agree to cooperate with investigations regarding improper use of CLETS, and state that the tribe and its agents shall comply with laws penalizing misuse of the system. Additionally, the bill adds one representative from a federally recognized Indian tribe that is a CLETS subscriber to the committee that oversees CLETS.

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[10] For more information on TAP, see download (justice.gov)

[11] For examples of deputation agreements, see Tribal-HoplandMendocinoCrossDepAgreement.pdf (ca.gov) and Dep Agr Table Mountain.pdf (standupca.org)

5. Argument in Support

According to California Indian Legal Services:

> For the last decade, CILS has worked with tribes to build tribal institutions such as tribal courts and law enforcement departments in an effort to provide better public safety in tribal communities. CILS was active in establishing both the California Tribal Court Judges Association and also the California Tribal Police Chiefs Association. Working directly with tribal court judges and police departments on the real "boots-on-the ground" issues, CILS is keenly aware of the limitations, barriers and consequences of not having access to the California Law Enforcement Telecommunications System (CLETS) or ability to enforce state laws on tribal lands. AB 44 will enhance and provide additional resources to both tribal courts and law enforcement to ensure all tribal police officers are protected as well as tribal citizens, guests and visitors to the reservation are safe from known perpetrators
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> California has the largest population of Native Americans of any state in the United States. California is facing increasing public safety challenges and the crisis of Missing and Murdered Indigenous Women and Persons (MMIWP). 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
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> Missing and Murdered Indigenous Women and People. 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.
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> Tribal police departments and courts need access to the CLETS in order to enter, verify, and update missing person's information. Currently only a couple of tribal law enforcement departments have access to CLETS as a result of their Deputation Agreement with their county sheriff or the Bureau of Indian Affairs. No California tribal court has access to CLETS. This lack of access means that tribal police departments and tribal courts are unable to search and access in real-time the criminal history, outstanding warrants and/or restraining orders related to specific individuals and cases. Without tribal access to CLETS, tribal courts and tribal law enforcement cannot enter domestic violence protective orders, emergency protective orders, or other restraining orders, limiting the ability of county and state law enforcement to protect tribal people.
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> This bill will address the crisis of MMIWP by strengthening public safety in tribal communities. It would authorize, but not require, qualified tribal police officers working for federally recognized tribes in California to access CLETS. These change will advance tribal public safety and justice systems overall.

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