
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1160 **Hearing Date:** April 10, 2018
Author: Hueso
Version: April 2, 2018
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Trespass: Gaming Facility on Tribal Lands*

HISTORY

Source: California Nations Indian Gaming Association (CNIGA)

Prior Legislation: SB 331 (Romero), 2007, died Assembly Appropriations Committee

Support: Barona Band of Mission Indians; Blue Lake Rancheria; Cachil Dehe Band of Wintun Indians of the Colusa Indian Community; California Tribal Business Alliance; Chemehuevi Indian Tribe; Elk Valley Rancheria; Federated Indians of Graton Rancheria; Jamul Indian Village of California; Karuk Tribe; Morongo Band of Mission Indians; Pala Band of Mission Indians; Redding Rancheria; Rincon Band of Luiseno Indians; Robinson Rancheria; San Diego District Attorney; Santa Ynez Band of Chumash Indians; Sherwood Valley Band of Pomo Indians; Shingle Springs Band of Miwok Indians; Soboba Band of Luiseno Indians; Southern California Tribal Chairmen's Association; Susanville Indian Rancheria; Sycuan Band of the Kumeyaay Nation; Tolowa Dee-ni' Nation; Tule River Tribe

Opposition: None known

PURPOSE

The purpose of this bill is to codify existing case law which states that it a misdemeanor to commit a trespass by entering a gaming facility on tribal lands of a federally recognized tribe after receiving an order of exclusion from the designated agency of the tribal government.

Existing law includes numerous provisions defining various forms of trespass and applicable penalties. Crime definitions and penalties typically turn on whether any damage has been done to property and whether the trespasser refuses a valid request to leave the land. (Pen. Code § 602-607.)

Existing law provides that any person is guilty of a misdemeanor, punishable by a county jail term of up to 6 months, a fine of up to \$1000 or both, who enters any other person's cultivated or fenced land, or who enters uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along exterior boundaries and at all roads and trails entering the lands without written permission, and does any of the following:

- Refuses or fails to leave immediately upon being requested to do so by the owner, owner's agent or by the person in lawful possession;
- Tears down, mutilates, or destroys any sign or notice forbidding trespass or hunting;
- Removes or tampers with any lock on any gate on or leading into the lands; or
- Discharges a firearm. (Pen. Code § 602, subd. (k).)

Existing law generally provides that a person commits one form of trespass to cultivated, fenced or posted land, where he or she, without the written permission of the landowner, the owner's agent or of the person in lawful possession of the land:

- Willfully enters any lands under cultivation or enclosed by fence, belonging to, or occupied by another person; or,
- Willfully enters upon uncultivated or unenclosed lands where signs forbidding trespass are displayed at intervals not less than three to the mile along all exterior boundaries and at all roads and trails entering the lands. (Pen. Code § 602.8, subd. (a).)

Existing law provides that trespassing – in circumstances other than where the person refuses a valid order to leave the premises, destroys a no-trespassing or no-hunting sign, tampers with any lock, or discharges a firearm – is an infraction or a misdemeanor, as follows:

- First offense is an infraction, punishable by a fine of \$75. (Pen. Code § 602.8, subd. (b)(1).)
- Second offense on any contiguous land of the same owner is an infraction, punishable by a fine of \$250. (Pen. Code § 602.8, subd. (b)(2).)
- A third or subsequent offense on any contiguous land of the same owner is a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months; by fine not exceed \$1000; or both. (Pen. Code § 602.8, subd. (b)(3).)

Existing law includes the following exceptions to the trespassing law in Section 602.8:

- A person who is conducting lawful union activities;
- A person who is on the premises and engaging in activities protected by the California or United States Constitution;
- A person making lawful service of process; and,
- An appropriately licensed person engaged in land surveying.

This bill creates a separate category of trespass in the Penal Code that specifies one may not enter a gaming facility on the Indian lands of a federally recognized Indian tribe after receiving an order of exclusion from the designated agency of the tribal government.

This bill defines “designated agency of the tribal government” as a person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency that is approved to fulfill the functions of the National Indian Gaming Commission, that is primarily responsible for carrying out the federally recognized Indian tribe’s regulatory responsibilities under the federal Indian Gaming Regulatory Act of 1988 (18 U.S.C. Sec. 1166 et seq. and 25 U.S.C. Sec. 2701 et seq.) and the federally recognized Indian tribe’s tribal gaming ordinance.

This bill defines “federally recognized Indian tribe” as an Indian tribe as defined in the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103-454).

This bill defines “gaming facility” as any building in which gaming activities or any gaming operations occur, or in which business records, receipts, or funds of the gaming operation are maintained, excluding offsite facilities primarily dedicated to storage of those records and financial institutions, and all rooms, buildings, and areas, including hotels, parking lots, and walkways that serve the activities of the gaming facility rather than providing them an incidental benefit.

This bill defines “Indian lands” as lands as defined in Section 1151 of Title 18 of the United States Code.

This bill defines “order of exclusion” as a written order issued by the designated agency of the tribal government of a federally recognized Indian tribe prohibiting a person from entering a gaming facility on the tribe’s Indian lands, if the person against whom the order was obtained was provided reasonable notice and an opportunity to be heard sufficient to protect his or her right to due process.

This bill provides that the Tribal Labor Panel may render a decision that the order of exclusion does not conflict with the rights created by the ordinance or a labor contract applicable to the gaming facility, if the order of exclusion prohibits a labor organization or its representative from entering an area of the gaming facility to which it is granted access by the ordinance for the purpose of organizing eligible employees.

COMMENTS

1. Need for This Bill

According to the author:

This bill would amend section 602 of the Penal Code and make it a misdemeanor to commit trespass by entering a gaming facility, as defined, on the Indian lands of a federally recognized Indian tribe after receiving an order of exclusion from the designated agency of the tribal government, as defined.

2. California Has Jurisdiction over Criminal Trespasses Committed on Tribal Lands

Federal law provides that California has jurisdiction over crimes committed on tribal lands. Title 18 U. S. C. § 1151 defines the term “Indian country” to include, *inter alia*, “all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent . . .”

Title 18 U. S. C. § 1162(a) further provides that, with respect to tribal lands within California, that State “shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country . . . to the same extent that such State . . . has jurisdiction over offenses committed elsewhere within the State . . . , and the criminal laws of such State . . . shall have the same force and effect within such Indian country as they have elsewhere within the State . . .”

Though tribes are often referred to as "sovereign" entities, it was "long ago" that "the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries." (*Worcester v. Georgia* (1832) 31 U.S. 515; *White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136, 141.) "Ordinarily," it is now clear, "an Indian reservation is considered part of the territory of the State." (*United States Department of Interior, Federal Indian Law 510*, and n. 1 (1958), citing *Utah & Northern R. Co. v. Fisher* (1885) 116 U.S. 28; see also *Organized Village of Kake v. Egan* (1962) 369 U.S. 60, 72.

Thus, local, state and tribal law enforcement have the authority to enforce criminal trespass violations. To insinuate that law enforcement officers do not understand how to apply and enforce criminal trespass laws is an insult since all of California's criminal laws have applied to "Indian country" for over 50 years.

3. Do Current Criminal Trespass Laws Provide Adequate Protection?

At present, the Penal Code provides protection from those who trespass upon tribal lands. As stated above, California laws have full force and effect. Thus, Penal Code Sections 602(l), 602(m), 602(o) and 602.8 allow for misdemeanor prosecution or an infraction against those who trespass upon Indian lands. Penal Code Sections 602(l), 602(m), and 602(o) are punishable by imprisonment in the county jail not exceeding six months; by a fine not exceeding \$1,000; or both imprisonment and a fine for a first-time offense. In addition thereto, Penal Code Section 602.8, also, creates an infraction for those who trespass.

Given that there are existing Penal Code provisions which provide equivalent and or greater protection from trespass upon tribal lands, is there a need for an additional criminal statute for Indian lands?

Proponents for this legislation have argued that while many sheriffs within the State of California do recognize their own authority to enforce trespass laws on tribal lands, there are sheriffs within the state who do not enforce these orders and thus the existing case law is needed in the Penal Code.

4. Argument in Support

According to the California Nations Indian Gaming Association:

It is critical that tribal governments have the ability to exclude individuals from their facilities and for that exclusion to be enforceable by local law enforcement. Tribal governments invest millions in strong security and surveillance protocols, however these protocols only work if they are enforceable. In order to close the jurisdictional loophole created by PL 280, an amendment to the penal code, recognizing the exclusion order from a federally recognized tribal government, is needed.