

AMENDED IN SENATE APRIL 16, 2001

**SENATE BILL**

**No. 911**

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**Introduced by Senator Alarcon**

February 23, 2001

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*An act to add Title 17 (commencing with Section 99000) to the Government Code, relating to tribal justice.*

LEGISLATIVE COUNSEL'S DIGEST

SB 911, as amended, Alarcon. Tribal justice.

Under existing law, the State of California has jurisdiction over offenses committed by or against Indians in the areas of Indian country within the state, and state criminal laws have the same force and effect within Indian country as they have elsewhere within the state.

This bill would state the Legislature's findings and declarations with respect to crime and law enforcement within Indian country. ~~This bill would also state the Legislature's intent to enact legislation to support increased law enforcement services within Indian country while respecting the sovereignty of tribes. This bill would also state the Legislature's intent to enact legislation that would require the state to consider and issue a report on ceding back territory to tribes. This bill would also require that the Attorney General maintain an Office of Native American Affairs and would require that the office establish a Tribal Task Force to address tribal justice issues, issue a report regarding retrocession, enhance opportunities to secure federal funds for law enforcement efforts, and ensure cooperation and resource sharing between law enforcement and the justice system.~~

*This bill would require that all law enforcement officers in the state receive training regarding tribal issues by taking courses on tribal issues developed by the Commission on Peace Officer Standards and*

*Training in collaboration with various state agencies that deal with tribal issues.*

*This bill would provide that in specified circumstances, tribal law enforcement officers shall have the powers and duties of peace officers, that certain tribal law enforcement agencies can participate in the California Law Enforcement Telecommunications System (CLETS), and that tribal law enforcement vehicles are deemed authorized emergency vehicles in specified circumstances. This bill would also specify that it should not be construed to impose liability on the state, and that tribal law enforcement agencies that are not subject to the Federal Tort Claims Act shall maintain a liability insurance policy of at least \$1,000,000.*

*By requiring local law enforcement officers to complete additional training, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

- 1 ~~SECTION 1.—The Legislature finds and declares that:~~
- 2 SECTION 1. Title 17 (commencing with Section 99000) is
- 3 added to the Government Code, to read:
- 4
- 5 TITLE 17. CALIFORNIA-TRIBAL JUSTICE ACT OF 2001
- 6
- 7 99000. This Act shall be known as, and may be cited as, the
- 8 “California-Tribal Justice Act of 2001.”
- 9 99001. The Legislature finds and declares the following:



1 (a) Recognizing that there is a government-to-government  
2 relationship between the State of California and each federally  
3 recognized Indian tribe in the state, the State of California hereby  
4 affirms its respect for the sovereignty of the tribes in California as  
5 well as its obligation to provide for law enforcement in Indian  
6 country.

7 (b) Pursuant to Section 1162 of Title 18 of the United States  
8 Code (Public Law 280, Chapter 505, First Session, 1953, 83d  
9 Congress of the United States), the State of California was given  
10 financial and administrative responsibility over justice in areas of  
11 Indian country within the state.

12 (c) Under Section 1162 of Title 18 of the United States Code, the  
13 State of California has criminal jurisdiction within boundaries of  
14 Indian country, while each tribe in California has inherent  
15 criminal jurisdiction over Indians within the boundaries of its  
16 Indian country, and thus the State of California and the tribes in  
17 California share concurrent criminal jurisdiction within Indian  
18 country.

19 (d) Population growth, economic development, and a historic  
20 lack of law enforcement presence within Indian country have led  
21 to an increased need for tribal justice services within Indian  
22 country in California.

23 (e) Indian tribes possess the inherent sovereign right to  
24 establish their own form of government, including tribal justice  
25 systems. These tribal justice systems are an essential part of tribal  
26 governments and serve as important forums for ensuring public  
27 health and safety for all peoples living within tribal jurisdictions.

28 (f) Tribal justice systems in California have lacked adequate  
29 funding, impeding their development and impairing the operation  
30 of existing systems. The lack of tribal dispute resolution forums in  
31 California causes hardship to tribal members and nontribal  
32 members residing or working within Indian communities subject  
33 to tribal jurisdiction, and impedes the administration of state court  
34 justice.

35 (g) The development of tribal justice systems will strengthen  
36 California tribal governments by providing forums for the fair and  
37 efficient resolution of matters within the tribes' jurisdiction. This  
38 will reduce the burden on local state courts; providing increased  
39 access to justice in Indian country for both tribal and nontribal  
40 members alike.



1 (h) By working together, the state and tribal governments can  
2 strengthen both tribal and state judicial systems and provide for  
3 enhanced justice for all Californians.

4 99002. The following definitions shall apply to this act:

5 (a) “Tribe” and “federally recognized tribe” means any tribe,  
6 band, nation, or other organized group or community of Indians  
7 located in the State of California that is recognized for the special  
8 programs and services provided by the United States to Indians  
9 because of their status as Indians.

10 (b) “Indian country” means all of the following:

11 (1) Lands within the limits of any Indian reservation under the  
12 jurisdiction of the United States, notwithstanding the issuance of  
13 any patent, and, including rights-of-way running through the  
14 reservation.

15 (2) Dependent Indian communities within the borders of the  
16 State of California.

17 (3) Indian allotments, the Indian titles to which have not been  
18 extinguished, including rights-of-way running through the same.

19 (c) “Sworn tribal law enforcement officer” means a person  
20 employed by a tribe for the purposes of providing law enforcement  
21 protection within the tribe’s Indian country.

22 99003. (a) The Attorney General shall maintain an Office of  
23 Native American Affairs.

24 (b) In order to promote strengthened tribal justice systems and  
25 increased cooperation between state and tribal judicial systems,  
26 a task force known as the Tribal Task Force shall be created within  
27 the Office of Native American Affairs for the purpose of:

28 (1) Maintaining an information clearinghouse to be shared by  
29 tribes and state courts.

30 (2) Providing training regarding the process for acquiring  
31 grants for the development, enhancement, and continuing  
32 operation of justice systems.

33 (3) Developing educational programs.

34 (c) The Tribal Task Force shall be made up of 14 members with  
35 equal numbers of tribal representatives and state representatives.  
36 Two of the state representatives shall be appointed by the  
37 Governor, two shall be appointed by the President pro Tempore of  
38 the Senate, and two shall be appointed by the Speaker of the  
39 Assembly. The director of the Office of Native American Affairs  
40 shall be the seventh state representative.



1 (d) *The state representatives of the Tribal Task Force shall not*  
2 *be compensated, except for reasonable per diem expenses related*  
3 *to their work for task force purposes.*

4 (e) *The composition and compensation for tribal*  
5 *representatives serving on the Tribal Task Force shall be decided*  
6 *among the various interested tribes.*

7 99004. *The Office of Native American Affairs shall issue a*  
8 *report concerning retrocession by March of 2002 with*  
9 *recommendations as to the manner in which California should*  
10 *respond to requests for retrocession by tribes.*

11 99005. (a) *The Legislature finds and declares that special*  
12 *training must be given to law enforcement officers on sovereignty,*  
13 *jurisdictional uniqueness, political contrasts, and federal statutes*  
14 *and laws that apply specifically to Indians both in and out of*  
15 *Indian country.*

16 (b) *On or before June 1, 2002, the Commission on Peace*  
17 *Officers Standards and Training (POST) shall develop and*  
18 *disseminate guidelines and training for all law enforcement*  
19 *officers in California as described in subdivision (a) of Section*  
20 *13510 of the Penal Code. The curriculum shall be created by POST*  
21 *in collaboration with a panel made up of representatives from:*

22 (1) *The Office of Native American Affairs.*

23 (2) *A tribal liaison from within the State Department of Social*  
24 *Services.*

25 (3) *The Native American Heritage Commission.*

26 (c) *Members of the panel shall not be compensated, except for*  
27 *reasonable per diem expenses related to their work for panel*  
28 *purposes.*

29 (d) *Every law enforcement officer in this state shall participate*  
30 *in the expanded training provided for in subdivision (b) as*  
31 *prescribed and certified by POST. Training shall begin no later*  
32 *than January 1, 2003.*

33 (e) *The course of instruction shall include, but not be limited to,*  
34 *adequate consideration of each of the following subjects:*

35 (1) *Jurisdictional issues arising in Indian country.*

36 (2) *The Indian Child Welfare Act, Section 1901, and following,*  
37 *of Title 25 of the United States Code, and how it applies to Indians*  
38 *residing in the State of California.*



1 (3) *The political differences between Indian and non-Indian*  
2 *citizens with respect to sovereignty, citizenship status, and cultural*  
3 *heritage.*

4 (f) *Once the initial basic training is completed, each law*  
5 *enforcement officer in California, as described in subdivision (a)*  
6 *of Section 13510 of the Penal Code, who adheres to the standards*  
7 *approved by POST shall be required to complete a refresher course*  
8 *every five years thereafter, or on a more frequent basis if deemed*  
9 *necessary, in order to keep current with changing legal and*  
10 *cultural trends in Indian country.*

11 (g) *The responsibilities of the Office of Native American Affairs*  
12 *shall include the following:*

13 (1) *Enhancing opportunities to secure funds from the federal*  
14 *government to support county and tribal law enforcement efforts.*

15 (2) *Ensuring cooperation and the sharing of resources among*  
16 *law enforcement and justice system entities across California.*

17 99006. (a) *The options currently available for tribes to*  
18 *increase law enforcement on tribal lands includes, but is not*  
19 *limited to:*

20 (1) *A local agency may cross-deputize a tribal law enforcement*  
21 *officer.*

22 (2) *A tribe may contract with a local agency for law*  
23 *enforcement services dedicated to tribal lands.*

24 (3) *A tribe may gain federal training and status for its law*  
25 *enforcement officers through the Bureau of Indian Affairs.*

26 (4) *A tribe may form tribal police departments.*

27 (b) *In order to increase the law enforcement options available*  
28 *to tribes, any sworn tribal law enforcement officer shall also have*  
29 *all the powers of a peace officer under California law, provided*  
30 *that the tribal law enforcement agency employing the officer has*  
31 *been authorized by tribal law to enforce state criminal laws, and*  
32 *further provided that the requirements of paragraphs (1) and (2)*  
33 *of subdivision (c) have been met.*

34 (1) *Sections 12002, 12025, and 12031 of the Penal Code*  
35 *prohibiting the carrying of firearms or other equipment do not*  
36 *apply to sworn tribal law enforcement officers who have satisfied*  
37 *the requirements of subdivision (c) whenever these officers are on*  
38 *duty pursuant to tribal law or policy.*



1 (2) *Nothing in this section shall be construed to apply to any*  
2 *federally recognized tribe that has not established a tribal law*  
3 *enforcement agency as provided in subdivision (d).*

4 (3) *Nothing in this section shall be construed to diminish or*  
5 *impair any existing or future agreement between a state or local*  
6 *law enforcement agency and a tribe, or any existing or future*  
7 *appointment or deputization of any person pursuant to subdivision*  
8 *(b) of Section 830.6 of the Penal Code.*

9 (c) *A sworn tribal law enforcement officer shall also have all*  
10 *the powers of a peace officer under California law upon*  
11 *compliance with both of the following requirements:*

12 (1) *The Commission on Peace Officer Standards and Training*  
13 *(POST) has certified that the sworn tribal law enforcement officer*  
14 *meets minimum POST peace officer standards and training*  
15 *requirements or the equivalent. POST is authorized to, and shall,*  
16 *make a determination regarding whether the sworn tribal law*  
17 *enforcement officer meets the standards within 90 days of*  
18 *submission of the sworn tribal law enforcement officer's training*  
19 *records and request for certification. In addition to any fees that*  
20 *may be charged pursuant to subdivision (f) of Section 832 of the*  
21 *Penal Code, the commission may charge reasonable fees, not to*  
22 *exceed the actual costs it incurs in certifying tribal law*  
23 *enforcement training compliance pursuant to this paragraph.*

24 (2) *POST has certified that the employing tribal government*  
25 *has established a tribal law enforcement agency as provided in*  
26 *subdivision (b), that the agency has a supervisory structure headed*  
27 *by a chief law enforcement officer, and that the chief law*  
28 *enforcement officer has fulfilled the requirements of paragraph*  
29 *(1). POST is authorized to, and shall, make the certification within*  
30 *90 days of submission of the request for certification.*

31 (d) *Notwithstanding subdivisions (b) and (c) above, the*  
32 *authority of sworn tribal law enforcement officers certified under*  
33 *subdivision (c) shall extend only to the following:*

34 (1) *Any public offense under state or tribal law committed, or*  
35 *that the officer has probable cause to believe has been committed,*  
36 *within the Indian country of the tribe that employs the peace*  
37 *officer.*

38 (2) *Any public offense under state or tribal law committed in*  
39 *the peace officer's presence, or that the officer has probable cause*  
40 *to believe has been committed, and with respect to which there is*



1 *immediate danger to person or property, or of the escape of the*  
2 *perpetrator of the offense.*

3 *(3) Any situation in which the tribal peace officer is requested*  
4 *by a California peace officer or California law enforcement*  
5 *agency to respond to a call for assistance.*

6 *(e) Tribal law enforcement agencies that are certified under*  
7 *paragraph (2) of subdivision (c) shall be eligible to apply to*  
8 *participate in the California Law Enforcement*  
9 *Telecommunications System (CLETS) notwithstanding Section*  
10 *15153 of the Government Code.*

11 *(f) Any tribal law enforcement vehicle used by sworn tribal law*  
12 *enforcement officers in carrying out their official duties shall be*  
13 *deemed an “authorized emergency vehicle” as defined in Section*  
14 *165 of the Vehicle Code.*

15 *(g) Nothing in this section shall be construed to impose liability*  
16 *upon nor to require indemnification by the State of California, or*  
17 *any political subdivision or public agency thereof, for any act*  
18 *performed by tribal law enforcement officers recognized as having*  
19 *peace officer powers pursuant to this section. Every tribal law*  
20 *enforcement agency that is not subject to the Federal Tort Claims*  
21 *Act shall maintain a liability insurance policy of not less than one*  
22 *million dollars (\$1,000,000) to cover any liability arising from the*  
23 *enforcement of state criminal law pursuant to the authority*  
24 *granted by this section.*

25 *99007. Nothing in this act shall be construed to increase,*  
26 *diminish, or otherwise affect the jurisdiction of the State of*  
27 *California or that of any Indian tribe.*

28 *SEC. 2. Notwithstanding Section 17610 of the Government*  
29 *Code, if the Commission on State Mandates determines that this*  
30 *act contains costs mandated by the state, reimbursement to local*  
31 *agencies and school districts for those costs shall be made*  
32 *pursuant to Part 7 (commencing with Section 17500) of Division*  
33 *4 of Title 2 of the Government Code. If the statewide cost of the*  
34 *claim for reimbursement does not exceed one million dollars*  
35 *(\$1,000,000), reimbursement shall be made from the State*  
36 *Mandates Claims Fund.*

37 ~~*(a) Under Public Law 280, Chapter 505, First Session, 1953,*~~  
38 ~~*83d Congress of the United States, the State of California was*~~  
39 ~~*given financial and administrative responsibility over justice in*~~  
40 ~~*areas of Indian country within the state.*~~



1 ~~(b) Population growth, economic development, and a historic~~  
2 ~~lack of law enforcement presence within Indian country have led~~  
3 ~~to an increased need for tribal justice services within Indian~~  
4 ~~country in California.~~

5 ~~(c) The State of California affirms its respect for the~~  
6 ~~sovereignty of the tribes in California as well as its obligation to~~  
7 ~~provide for law enforcement within Indian country pursuant to~~  
8 ~~Section 1162 of Title 18 of the United States Code.~~

9 ~~SEC. 2.—It is the intent of the Legislature to enact legislation~~  
10 ~~that will do all of the following:~~

11 ~~(a) Assist the sovereign tribes of the State of California to~~  
12 ~~continue to develop their own independent systems of trial justice~~  
13 ~~within tribal lands if they so choose.~~

14 ~~(b) Ensure sovereign empowerment to expand public safety~~  
15 ~~services in each tribal nation, while contributing additional public~~  
16 ~~safety resources to the State of California as a whole.~~

17 ~~(c) Bring together tribal governments, state, and federal law~~  
18 ~~enforcement agencies and justice systems in order to provide~~  
19 ~~resources and foster the growth of justice systems for those Indian~~  
20 ~~tribes seeking to improve safety on tribal lands.~~

21 ~~(d) Have the State of California foster and arrange for increased~~  
22 ~~tribal law enforcement on Indian lands, assist in the securing of~~  
23 ~~federal funds to help pay for increased tribal justice systems, and~~  
24 ~~act as a mediator and facilitator for the implementation of tribal~~  
25 ~~justice systems between and among tribes and counties.~~

26 ~~(e) Have the state investigate and coordinate ways in which~~  
27 ~~federally recognized tribes can increase law enforcement in~~  
28 ~~cooperation with county sheriffs. The state will suggest and~~  
29 ~~approve arrangements calling for tribes and groups of tribes to~~  
30 ~~engage any or none of the following options:~~

31 ~~(1) Cross-deputization between tribal officers and county~~  
32 ~~sheriffs.~~

33 ~~(2) Contracting between a tribe and county Sheriffs to have~~  
34 ~~Sheriffs assigned to the reservation.~~

35 ~~(3) The creation of tribal police departments with full POST~~  
36 ~~training and access to CLETS.~~

37 ~~(4) The creation of Memorandum of Understanding between~~  
38 ~~tribes and sheriffs in regards to ensuring the safety of all Indian and~~  
39 ~~non-Indians on tribal lands.~~



- 1 ~~(f) Have the state assist and coordinate ways to enhance tribes'~~  
2 ~~or groups of tribes' ability to:~~
- 3 ~~(1) Create a tribal court system. The system would include the~~  
4 ~~training of judges, defining jurisdiction, and implementation of a~~  
5 ~~cohesive judicial system.~~
- 6 ~~(2) Work with local judicial entities (including court systems~~  
7 ~~and prison systems) to allow for special consideration of the~~  
8 ~~special needs of Indian tribes.~~
- 9 ~~(g) Have the state consider the issue of retrocession and issue~~  
10 ~~a report by March of 2002 with recommendations on how~~  
11 ~~California could set up a process for the state to deal with requests~~  
12 ~~for retrocession by tribes. The report will include recommended~~  
13 ~~guidelines for retrocession candidacy that include consideration of~~  
14 ~~a tribe's economic status, judicial autonomy, resource use, and~~  
15 ~~history of self-governance. Preference for retrocession will be~~  
16 ~~given to tribes whose economic status, judicial status, and resource~~  
17 ~~management would improve after retrocession.~~

