

Date of Hearing: April 22, 2025

Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 1097 (Ávila Farías) – As Amended March 17, 2025

REVISED

As Proposed To Be Amended in Committee

SUMMARY: Clarifies that California criminal trespass laws apply on Indian lands. Specifically, **this bill:**

- 1) Clarifies, for purposes of the crime of trespassing upon private property, whether or not generally open to the public, after having being informed by a peace officer, at the request of the owner, that the peace officer is acting at the request of the owner and that the property is not open to the particular person, or failing to leave the property after being asked to leave the property, that if the conduct occurs on Indian lands a peace officer includes a person designated by a Tribe that has been deputized or appointed by the county sheriff, and has completed the basic Commission on Peace Officer Standards and Training (POST) training course, and has the full powers and duties of a peace officer.
- 2) Clarifies that the use of the term “land” in California’s criminal trespass statutes also applies to Indian lands, which is declaratory of existing law.
- 3) Defines “Indian lands” as all land within the limits of any Indian reservation under the jurisdiction of the United States notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, all dependent Indian communities within the borders of the U.S. whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

EXISTING FEDERAL LAW:

- 1) 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.)
- 2) Provides that the criminal laws of California shall have the same force and effect within Indian country as they have elsewhere within the State. (*Ibid.*)

EXISTING STATE LAW:

- 1) States that any person designated by a tribe, who is deputized or appointed by the county sheriff, is a peace officer, if the person and the person has completed the basic POST training course. The authority of a peace officer pursuant to this subdivision includes the full powers

and duties of a peace officer as specified in the above paragraph. (Pen. Code, § 830.6, subd. (b).)

- 2) Allows 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)
- 3) Generally punishes trespass as a misdemeanor, punishable by a county jail term of up to six months, a fine of up to \$1,000 or both. (Pen. Code, §§ 19, 602.)
- 4) Makes it a misdemeanor to willfully commit trespass by entering upon private property, including contiguous land, real property, or structures thereon belonging to the same owner, whether or not generally open to the public after: 1) having been informed by a peace officer at the request of the owner, their agent, or person in lawful possession, and upon being informed by the peace officer that the officer is acting at the request of the owner, their agent, or person in lawful possession, that the property is not open to the particular person; or 2) refusing or failing to leave the property upon being asked to leave the property, subject to the following:
 - a) This crime applies only to a person who has been convicted of a crime committed upon the particular private property.
 - b) A single notification or request to the person described above shall be valid and enforceable unless and until rescinded by the owner, the owner's agent, or the person in lawful possession of the property.
 - c) Where the person has been convicted of a violent felony, that notification or request applies without time limitation, if the person has been convicted of any other felony, this applies for no more than five years from the date of conviction, where the person has been convicted of a misdemeanor, this applies for no more than two years from the date of conviction, and where the person was convicted for an infraction, as specified, this applies for no more than one year from the date of conviction. (Pen. Code, §602, subd. (t).)
- 5) Establishes numerous other trespass crimes, as specified. (Pen. Code, §602, subs. (a)-(y).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Unfortunately, the seclusion tribes have learned to live with and the peace that they fought so long to obtain, has become threatened by trespassers. Additionally, this geographical seclusion has made it difficult to sustain an adequate number of law enforcement personnel to protect the lands. Trespassing on Indian lands places a significant safety risk on tribal families.

While California has existing law within California Penal Code Section 602 to protect against trespassing, this section of law does not explicitly include Indian lands as those protected under this statute. AB 1079 clarifies that federally recognized Indian Tribal lands

are considered areas where trespassing would constitute a misdemeanor.”

- 2) **Effect of this Bill:** California’s primary trespass statute – Penal Code section 602 – has nearly an entire alphabet of subdivisions. (Pen. Code, 602.) Most of the subdivisions in Section 602 define separate crimes, typically each with slightly different elements than the other subdivisions. (*Ibid.*) Trespass is generally a misdemeanor, though California law does include a felony for aggravated trespass. (Pen. Code, § 602 subds. (k) & (l). For misdemeanor trespass, the penalty is up to six months of jail time or up to a \$1,000 fine, or both. (Pen. Code, §§ 19, 602.)

Most relevant here is subdivision (t) which makes it a misdemeanor to willfully enter private property, including contiguous land, real property, or structures thereon, regardless of whether the land is generally open to the public after: 1) being informed by a peace officer at the request of the owner that the officer is acting at the request of the owner and that the property is not open to the particular person; or 2) refusing or failing to leave the property upon being asked to leave the property by the officer. (Pen. Code, §602, subd. (t)(1).)

This only applies to a person who has been convicted of a crime committed upon the particular private property. (Pen. Code, §602, subd. (t)(2).). Further, the notification by a peace officer, on behalf of an owner, that the property is not open to a particular person or a request for that person to leave the property, is valid and enforceable until rescinded by the owner, their agent, or the person in lawful possession of the property. (Pen. Code, §603, subd. (t)(3).) The amount of time that the notification or request remains in effect depends on the severity of the underlying crime. Where the person was convicted of a violent felony, that notification or request applies without time limitation, while if the person was convicted of any other felony, this applies for no more than five years from the date of conviction. (Pen. Code, §602, subd. (t)(4).). Additionally, if the person was convicted of a misdemeanor, this applies for no more than two years from the date of conviction. (*Ibid.*) If the person was convicted for an infraction, as specified, this applies for no more than one year from the date of conviction. (*Ibid.*)

This bill would clarify, for purposes of the above trespass crime, that if the conduct occurs on Indian lands, a peace officer includes a person designated by a Tribe that has been deputized or appointed by the county sheriff and has completed the basic POST training course, and has the full powers and duties of a peace officer.

Additionally, it clarifies that the use of the term “land” in specified California criminal trespass statutes includes Indian lands in California, which is declaratory of existing law.

- 3) **California Criminal Trespass Laws Apply on Tribal Land:** Under Public Law 280 (1953), 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.) California’s criminal laws have the same force and effect within Indian country as they have elsewhere within the State. (*Ibid.*) In other words, the criminal laws of California, including criminal trespass laws, extend to Indian lands within the state.

Accordingly prosecutors and law enforcement may enforce criminal trespasses on Indian lands to the same extent they can enforce criminal trespass on property not located on Indian

land. Given that Public Law 280 created concurrent jurisdiction over criminal offenses committed by or against Indians within Indian Country, tribal police may also enforce certain crimes on Indian land. Specifically, if the offender is non-Indian, and the victim is non-Indian or Indian or it is a victimless crime the state generally has exclusive jurisdiction. (*Draper v. United States* (1896) 164 U.S. 240). Alternatively, if the offender is Indian, and the victim is Indian or non-Indian, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (Indian Civil Rights Act, 25 U.S.C. § 1301.) Lastly, if the offender is Indian, and it is a victimless crime, there is concurrent state and tribal jurisdiction, exclusive of the federal government. (*Ibid.*) Given that trespass is generally a victimless crime, tribal police already have the authority to enforce trespass violations where the offender is Indian, irrespective of involvement of state or local law enforcement.

Additionally, Indian governments seeking to prohibit persons from entering tribal land while under an order of exclusion may already do so. In *Duro v. Reina*, the Supreme Court addressed the authority of tribal law enforcement to detain non-Indians: [T]ribes also possess their traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands []... Tribal law enforcement authorities have the power to restrain those who disturb public order on the reservation, and [] if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise [] their power to detain the offender and transport him to the proper authorities. (*Duro v. Reina* (1990) 495 U.S. 676, 696.)

In sum, California’s criminal trespass laws already apply to Indian lands within the state, and as such, local, state and tribal law enforcement have the authority to enforce criminal trespass violations on Indian lands.

- 4) **Argument in Support:** According to *California Civil Liberties Advocacy*, “AB 1097 is a long-overdue clarification of state law under the framework of Public Law 280, which delegates certain criminal jurisdiction to the state in Indian country. While existing California law penalizes various forms of trespass on private property, it has lacked clarity regarding Indian lands, leaving enforcement inconsistent and leaving tribal governments without practical recourse in cases of repeat trespassers—even after criminal activity has occurred. This bill closes that gap.

“Affirming Tribal Sovereignty

“Most importantly, AB 1097 properly recognizes the inherent sovereign authority of federally recognized tribes to regulate access to their lands, issue exclusion orders, and partner with local law enforcement agencies on a voluntary basis to enforce those orders. This is not only a matter of criminal law but also a fundamental affirmation of tribal self-determination and territorial integrity. In a time when Indigenous communities still face challenges to their jurisdiction and dignity, AB 1097 represents a thoughtful step toward parity and respect.

“Protecting Due Process and Civil Liberties

“Importantly, AB 1097 builds upon existing due process protections by extending California’s current limitations on trespass enforcement to Indian lands. Under existing law, enhanced trespass penalties apply only to individuals who have committed a prior criminal

offense on the same property, with enforceability limited by time—ranging from one year for infractions to five years for felonies, and unlimited for violent felonies. This bill preserves those safeguards while clarifying that they now apply equally to Indian lands and tribal exclusion orders. By explicitly defining terms such as “Indian lands,” “order of exclusion,” and “tribal government,” AB 1097 helps ensure enforcement is targeted, consistent, and respectful of individual rights as well as tribal sovereignty.

“Advancing Civil Liberties Through Sovereignty

“As a civil liberties organization, CCLA believes property rights, the right to self-governance, and the right to safety on one’s own land are foundational liberties. These rights are no less applicable to sovereign tribal nations. AB 1097 ensures that tribal lands are treated with the same dignity and respect as any other private or governmental property under California law.”

- 5) **Argument in Opposition:** According to *UNITE HERE International Union*, “While we remain steadfast in support of tribal sovereignty, we remain just as steadfast in our resolve to protect the access rights granted to union organizers and employees under the Tribal Labor Relations ordinance (TLRO). To that end, we were able to support previous iterations of this bill, including SB 1160 (Hueso) in 2018, which included protections ensuring that labor organizers and employees exercising their rights to organize a union are not improperly removed from tribal lands via orders of exclusion. To that end, we request Assembly Member Avila Farias to take the same language, which is in sum and substance virtually identical to the language in SB 1160:

“If the order of exclusion pertains to a labor organization or its representatives or eligible employees engaged in otherwise lawful labor activity, the tribe shall first obtain a decision from the Tribal Labor Panel established by the tribal labor relations ordinance stating that the order of exclusion does not conflict with the tribal labor relations ordinance adopted by the tribe or with a labor contract that is applicable to the gaming facility, provided that the affected labor organization, its representatives and eligible employees shall be given notice and an opportunity to be heard by the Tribal Labor Panel before such decision is issued.

“This language was previously negotiated by UNITE HERE and tribal stakeholders in 2018. We urge Assembly Member Avila Farias to amend her bill with the same language, which balances tribal sovereignty against the need to preserve organizing rights.”

- 6) **Related Legislation:** AB 31 (Ramos), would establish a pilot program, under the direction of the DOJ and the Commission on Peace Officer Standards and Training that would grant tribal law enforcement officers, of specified tribes, state peace officer authority on Indian land and elsewhere in the state under specified circumstances. AB 31 is pending in the Assembly Appropriations suspense file.
- 7) **Prior Legislation:**
- a) AB 2120 (Chen), of the 2023-2024 Legislative Session, would have allowed a licensed repossession agency and its employees to enter upon real property, not open to the public and without the consent of the owner, when they are searching for collateral or

repossessing collateral, and upon completing the search or repossession, leave the private property within a reasonable amount of time. AB 2120 was vetoed by the Governor.

- b) SB 468 (Seyarto), of the 2023-2024 Legislative Session, would have authorized, for the purposes of requesting assistance enforcing trespass violations, a request for peace officer assistance to continue after a change in ownership or transfer of lawful possession if the transferee notifies the relevant law enforcement or the city of the change. SB 468 was never heard in Senate Public Safety.
- c) SB 602 (Archuleta), Chapter 404, Statutes of 2023, extends the operative timeframe for trespass letters of authorization from 30 days to 12 months, as specified.
- d) AB 515 (Chen), of the 2021-2022 Legislative Session, was substantially similar to AB 2120 (Chen), of the 2023-2024 Legislative Session. AB 515 was vetoed by the Governor.
- e) AB 660 (Rubio), Chapter 381, Statutes of 2017, expands the crime of trespass on the property of a public agency.
- a) SB 1160 (Hueso), of the 2017-2018 Legislative Session, would have made entering a gaming facility on a federally recognized Indian tribe after receiving an order of exclusion from the tribal government, a misdemeanor offense. SB 1160 was never heard in Assembly Public Safety.
- b) AB 1686 (Medina), Chapter 453, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present.
- c) SB 1295 (Block), Chapter 373, Statutes of 2014, extended from six months to 12 months the time in which a property owner may authorize a peace officer to arrest a trespasser on private property, closed to the public and posted as being closed, without the owner of the property being present, and provides that a request for assistance shall expire upon transfer of ownership of the property or upon change of the person in lawful possession.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)
Crime Victims United of California

Oppose Unless Amended

California Attorneys for Criminal Justice
California Public Defenders Association (CPDA)

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