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AB-44 California Law Enforcement Telecommunications System: tribal police. (2023-2024)

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Assembly Bill No. 44

CHAPTER 638

An act to add Section 15168 to the Government Code, relating to tribal police.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 44, Ramos. California Law Enforcement Telecommunications System: tribal police.

Existing law establishes the California Law Enforcement Telecommunications System (CLETS) within the Department of Justice to facilitate the exchange and dissemination of information between law enforcement agencies in the state.

This bill would require the department to grant access to the system to the law enforcement agency or tribal court of a federally recognized Indian tribe meeting certain qualifications, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) California is home to more Native American and Alaska Native people than any other state in the country. There are 109 federally recognized tribes in California and 67 nonfederally recognized tribes listed on the contact list maintained by the Native American Heritage Commission. Federally recognized tribes have a unique government-to-government relationship with local, state, and federal entities, and are recognized as sovereign nations. Tribes can create their own laws, governmental structure, and enrollment or membership rules for the land and citizens of their nation.

(b) California has the fifth largest caseload of missing and murdered Indigenous women and people. Nationwide, more than four in five Native American and Alaska Native women have experienced violence in their lifetime, and more than one in three have in the last year. One in 130 Native American children are likely to go missing each year. Indigenous women go missing and are murdered at rates higher than any other ethnic group in the United States. Nearly one-half of all indigenous women have been raped, beaten, or stalked by an intimate partner. LGBTQ+ Native Americans and people who identify as "two-spirit" people within tribal communities are also often the targets of violence.

(c) California Native American tribes retain the inherent authority to self-govern, including the authority to enact laws that govern their lands.

(d) Approximately 26 tribal governments in the state have exercised their inherent authority by establishing law enforcement agencies to maintain public safety on Indian lands. Additionally, tribes have exercised their inherent authority by establishing 22 tribal courts statewide, serving approximately 40 tribes.

(e) Federal law requires certain states, including the State of California, to enforce state criminal laws on Indian lands in those states, but does not provide adequate resources to the selected states or the tribes within those states for public safety.

(f) Thirteen states and the federal government provide tribal law enforcement authority to enforce state or federal law if tribal officers meet qualifications delineated in the state and federal authorizing legislation and regulations. Twenty-one of the 26 tribal governments in California that have law enforcement departments have deputation agreements with the Bureau of Indian Affairs, Office of Justice Services, which allows qualified tribal officers to become special commissioned federal officers authorized to enforce federal law on Indian lands in their jurisdiction.

(g) Where state and county law enforcement departments have developed close working and cooperative relationships with the tribal law enforcement agencies, these relationships have resulted in greater public safety for both the non-Indian and Indian communities.

(h) State law establishing the California Law Enforcement Telecommunications System (CLETS) states that “the maintenance of law and order is, and always has been, a primary function of government,” and that “the state has an unmistakable responsibility to give full support to all public agencies of law enforcement,” and that the state’s responsibility “includes the provision of an efficient law enforcement communications network available to all such agencies.” Indian tribes have not been considered public agencies for purposes of this statute, excluding them from CLETS access.

(i) Current entities with access to CLETS include sheriffs, city police departments, district attorneys, courts, probation departments, the California Highway Patrol, the Department of Justice, the Department of Insurance, the Employment Development Department, university, college, and school district police departments, fire department arson investigation units, and the Federal Bureau of Investigation. Despite this broad application of public agencies with access to CLETS, tribal courts and tribal police that operate within California’s borders do not have CLETS access.

(j) Without access to CLETS, tribal police cannot receive, share, or update critical criminal record information, missing and unidentified persons files, protective order files, and violent persons files; all of which are critical to effective and thorough investigations of, and related to, missing and murdered Indigenous women and people, violence, and domestic violence on tribal lands.

(k) 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. Tribal protective orders can only be entered into the Tribal Access Program and are only viewable by other law enforcement through National Crime Information Center, limited systems that do not give county or state law enforcement access to the parameters of these protective orders. Because tribal law enforcement lack access to CLETS, they are unable to view the parameters of a CLETS protective order when they respond to calls for service in these matters. This lack of access to CLETS hampers state and county police officers from effectively protecting victims of violence and harassment, and creates a greater risk that these legal protective orders will not be enforced at the expense of the safety of women, children, and victims fleeing violence. This exacerbates the crisis of missing and murdered Indigenous women and people.

(l) In a pilot program involving the Sycuan Tribal Police Department, an agreement with the county allowed full access to CLETS by tribal officers. Because information is mutually shared between the tribe and local law enforcement, both tribal police and sheriff’s deputies have access to each other’s data, including witness contact information, civilian contact with law enforcement, report narratives, and lists of stolen items. This mutual relationship of support, resource sharing, and communication between the tribe and local and state government has been beneficial to both agencies and critical to increasing public safety for the Sycuan Tribe, including an increase in crimes solved throughout the community.

SEC. 2. Section 15168 is added to the Government Code, to read:

15168. (a) Notwithstanding Section 15153, the system may connect and exchange traffic with the compatible systems of a tribal government, as provided in this section.

(b) A law enforcement agency or court of a tribe may apply to the Attorney General for access to the system. The Attorney General shall provide system access to any law enforcement agency or court of a tribe that has made application and that meets all of the qualifications prescribed in subdivision (c), as determined by the Attorney General. System access provided to a tribe shall be at the sole expense of that tribe.

(c) The Attorney General shall deem a tribe that has applied for system access pursuant to subdivision (b) 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:

(1) 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.

(2) 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.

(3) 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.

(4) 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, including, without limitation, Section 6200 and this chapter, Sections 502, 11105, 11141, 11142, 11143, and 13300 to 13304, inclusive, of the Penal Code, and Section 1808.45 of the Vehicle Code.

(5) 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 Department of Justice's regulations, agreements, and operating policies, practices, and procedures, relating to the security requirements, access to the records and information from the system, and use of records and information from the system.

(d) The intent of the Legislature in enacting this section is to grant tribes access to, and use of, criminal justice databases, and the information in those databases, in a manner similar to the access granted under federal law codified in Section 534 of Title 28 of, and Section 41107 of Title 34 of, the United States Code.

(e) 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. These charges shall be reasonably similar to those imposed on other system subscribers.

(f) As used in this section, the following terms are defined as follows:

(1) "Tribe" means a federally recognized Indian Tribe whose territorial boundaries lie wholly or partially within the State of California, and any agencies, entities, or arms of the tribe, as applicable, either together or separately.

(2) "Sovereign immunity" means immunity from suit or action 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.