ANALYSIS OF TRIBAL-STATE LAW ENFORCEMENT COOPERATION ACT OF 2001

Although there is a need to address law enforcement issues in California Indian communities, the proposed "Tribal-State Law Enforcement Cooperation Act of 2001" does not resolve many of these issues and raises concerns about compromising the sovereignty of the Indian tribes of California, especially the small non-gaming tribes. Non-Indians with police experience are looking to gaming tribes for job opportunities because that is where the money is. The law enforcement needs of small, non-gaming tribes are not the priorities of the authors of the proposed Act. Instead, they are concerned with the needs of the gaming tribes. But the "one size fits all" approach is not appropriate for addressing the diverse tribal law enforcement issues in California.

One of the most significant problems with the proposed Act is that it causes tribes to relinquish a crucial aspect of their sovereignty. Pursuant to the Act, the tribal police officers are required to be certified by the Commission on Peace Officer Standards and Training (POST). By allowing the State of California to define who is a tribal "peace officer," rather than allowing each tribe to make that determination according to its own tribal law, the Act effectively eliminates tribal government contribution to the certification process.

Secondly, unless each of the tribes has additional training resources, officers who only have POST training are not adequately qualified to provide police services in California Indian communities. There are unique cultural and legal issues involved in providing police services to Indian country in California that POST does not address. For example, POST training does not include criminal law training that intersects with federal Indian law, such as P.L. 280. Pursuant to the U.S. Supreme Court decision in California v. Cabazon, Public Law 280 does not allow certain portions of the California penal code to apply to Indian country. There are standards for and limitations on the application of state criminal law in Indian country pursuant to P.L. 280. Without such training, it would be impossible for a peace officer to know which laws he/she can enforce and against whom he/she can enforce them. In addition, assuming the tribe has its own law and order code, the POST certification process would certainly not include any training on those laws. If a tribe hired a non-Indian POST certified officer and put the officer to work without specialized training, the officer would not know what the tribal law was or how to apply it. The Public Law 280 video produced by POST is not enough training in the mechanics of federal Indian law. Furthermore, that officer would not be familiar with the community he/she would be serving. More importantly, the officer would have no stake in the community.

The Tribal-State Law Enforcement Cooperation Act does not address the issue of the enforcement of tribal law by state/local police. The Act permits tribal "peace officers" to enforce state law on tribal lands, and even to be called off the reservation or rancheria to assist state officers. It does not require state or county police officers to have basic training in Indian law or be familiar with the law of the local tribes. Nor does it allow tribes that have peace officers to call on state police in an emergency. While Public Law 280 provides for concurrent criminal jurisdiction with tribes, the reality is that state and county law enforcement officers are reluctant to enter Indian lands in California for several reasons, including confusion over jurisdiction, the remoteness of some tribal communities, a lack of resources and a rejection of outside police services by certain tribal councils. It is likely that this pattern of a lack of police services will increase if the local police agencies are informed that tribes are establishing their own police agencies. As such, the Act puts the entire focus on tribal police officers being qualified according to state law but ignores the reciprocal situation with state or county police officers. In
other words, the "cooperation" is really tribal capitulation to enforce state laws and be available to assist state police officers without allowing tribal governments the opportunity to train state and county law enforcement officers and to have them available to the tribal communities in emergencies.

Even if a reciprocal provision was written into the Act, the lack of cultural training for state/local law enforcement officers could result in some compromising situations. For example, there could be an incident on a reservation that required the assistance of non-tribal police. The nearest available unit could be a POST-certified officer from another reservation. If the two tribes were not on friendly terms with one another, the presence of those tribal officers could seriously escalate the situation. Without appropriate cultural training, the state/local police could foreseeably create such a scenario.

Another shortfall of the proposed Act is that it places the entire focus on the training of tribal peace officers in state laws and procedures and does not encourage the development of tribal justice systems and infrastructures. The Act fails to address such basic issues as prosecution of offenders, tribal court development and the disposition of cases. If a tribal police officer arrests an Indian on the reservation or rancheria for violation of tribal law, but the tribe does not have a prosecutor and court, then the arrest is meaningless; without some agreement in place and the appropriate training, no county prosecutor or state court judge is going to prosecute based solely on tribal law, and it is questionable whether a county prosecutor will prosecute a crime arising on the reservation anyway. If a tribal police officer makes an arrest that is valid under the Act, is the prosecutor bound to prosecute the case? Without the necessary tribal justice systems in place, tribal police officers will become merely tribally-funded state police, and, in fact, the Act encourages this result.

Another major issue this proposed Act fails to address is how to prevent tribal leaders of certain gaming tribes from using the tribal "peace officers" as their own private police force that functions solely to promote their personal objectives. In the 1970's and '80's, tribal members in the Oglala Sioux Nation were terrorized by the "Guardians of the Oglala Nation," otherwise known as "GOONs." These GOON squads were tribal police officers whose sole purpose was to protect the interests of the tribal chairman at the time. Any person who spoke out against the tribal chair subjected himself and his family to being arrested, beaten and otherwise harassed by the GOONs. While a tribal council may have the potential to create a police force that acts as a "GOON" squad, this Act, which emphasizes police training in state law over the development of tribal justice infrastructures, would put the full power of state law behind tribal peace officers with no accountability to Indian communities. These GOON squad incidents are already occurring on a few rancherias in California. Are we now going to sanction such conduct through state law?

These fears are heightened by the fact that the organization that represents the gaming tribes in California recently refused to support an act that would have provided a state-funded resource center for the development and enhancement of tribal justice infrastructures. The leadership of this organization was heavily influenced by a law professor who recklessly condemned the legislation.

To seriously address the unique law enforcement needs of each of the 107 federally-recognized tribal communities in California, the tribes and state/local agencies would be better served utilizing cross-deputization, rather than relying on the POST certification process. Although the Act does not affect any agreements currently in place between tribes and local agencies nor
does it preclude creating such agreements in the future, it revolves around the POST training
requirement. POST certification in and of itself does not translate into effective police services.
There are a number of POST certified law enforcement officers who have no business being in
police work. Some may be looking for work with gaming tribes, or they may already be working
in Indian country. The only benefit the tribes get from this "Cooperation Act" is access to CLETS
at the behest of the state. In exchange, California Tribes relinquish their sovereign ability to
determine through their own laws who will be a peace officer in their communities.

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