

UPDATE ON CALIFORNIA INDIAN LAW LEGISLATION

Lauren van Schilfgaarde
Tribal Law Specialist
Tribal Law and Policy Institute

California Indian Law Assoc. Conference
October 24, 2016
Viejas Casino and Resort



The CA Legislature – 2015-2016: Tribal Issues



Notaries Public and Tribal ID

- S. 997 ~ Hon. Ricardo Lara (D-Bell Garden), in cooperation with CILS
- Allows CA notaries public to accept tribal identification cards from federally recognized tribes as a form of identification for notarial acts.
- Acknowledges the struggle of rurally-located tribal members to access alternative form of ID



Medical Marijuana

- AB 2679: Licensing authorities are required to report disciplinary actions and complaints to the state's new Bureau of Medical Marijuana Regulation. Authorizes new research by the University of California into the effect of marijuana on motor skills.
- FAILED: AB 2243: Would have taxed \$9.25 per ounce of marijuana flowers, \$2.75 per ounce of pot leaves and \$1.25 per ounce of immature pot plants. The revenues would be earmarked for law enforcement and environmental programs.
- FAILED: AB 2300: Landlords would be able to ban medical marijuana users from smoking in their apartment buildings.

Online Poker – Failed Bill



- AB 2863 (Asm. Adam Gray) would have legalized intrastate Internet poker by allowing state Internet poker licenses to be granted to card rooms and the 60 Native American tribes that operate casinos, as long as they are judged "suitable" to participate.
- Divergence on “bad actor” amendments, resulting in insufficient support to put bill up for a vote.
 - Bill would have required a two-thirds majority (54 votes), which is significant bi-partisan support for a controversial issue.
- Major back and forth between coalitions consisting of tribes, horseracing, labor unions, card rooms, and poker players and sites.

Tribal Gaming Compacts

-
- AB 291 by Assem. Toni G. Atkins (D-San Diego) – Barona Band of Mission Indians
 - AB 466 by Assem. Cheryl Brown (D-San Bernardino) – San Manuel Band of Mission Indians
 - AB 629 by Assem. Lorena Gonzalez (D-San Diego) – Pala Band of Mission Indians
 - AB 795 by Assem. Toni G. Atkins (D-San Diego) – Sycuan Band of the Kumyaay Nation
 - AB 1282 by Assem. Adam Gray (D-Merced) – Buena Vista Rancheria of Me-Wuk Indians
 - AB 1540 by Assem. Adam Gray (D-Merced) – Santa Ynez Band of Mission Indians
 - AB 1767 by Assem. Frank Bigelow (R-O'Neals) – Jackson Rancheria Band of Miwuk Indians
 - AB 1977 by Assem. Jim Wood (D-Healdsburg) – Yurok Tribe
 - AB 2915 by Assem. Eduardo Garcia (D-Coachella) – Agua Caliente Band of Cahuilla Indians
 - AB 2358 by Assem. Lorena Gonzalez (D-San Diego) – Pechanga Band of Luiseno Indians
 - SB 187 by Sen. Isadore Hall III (D-Compton) – Jamul Indian Village of California
 - SB 1313 by Senator Isadore Hall III (D-Compton) – Yocha Dehe Wintun Nation

Tribal Gaming Compacts

- Two of the compacts – (Pechanga and the Yocha Dehe)– establish the **California Native American Education and Scholarship Fund**, which will allow Native American youth from tribes without substantial gaming revenue to pursue and obtain undergraduate, graduate and professional degrees.

The CA Legislature – 2015-2016:

Other Major Issues



Attention to Sexual Assault

- Crosby
 - S. 813: Removes statute of limitations for some sex crimes, including rape, forcible sodomy and molestation of a child
- Brock Turner
 - AB 701: Expands the legal definition of rape to include all forms of nonconsensual sexual assault when a judge is determining the sentence and connecting victims with services
 - AB 2888: Prohibits a judge from handing a convicted offender probation in certain sex crimes when the victim is unconscious or prevented from resisting by any intoxicating, anesthetic or controlled substance

Other Major Issues: Human Trafficking and PUC

- Human Trafficking
 - AB 1276: Allows minors ages 15 or younger to testify through closed-circuit televisions outside the courtroom, where they can share their experiences away from the presence of the jury and the defendant.
- Overhauling the Public Utilities Commission
 - AB 2168, SB 215, SB 512: Overhauls the scandal-ridden Public Utilities Commission, which oversees the state's electric and gas utilities alongside other major industries, to boost outside oversight and transparency.

Other Major Issues: Affordable Housing and Climate Change

- Affordable Housing

- AB 2299, AB 2406, SB 1069: Make it easier for homeowners to add another housing unit in their backyards or as part of their existing homes.



- Climate Change: Existing law set a 2020 target for reducing emissions to 1990 levels.
 - SB 32: Require greenhouse gas emissions to be 40% below 1990 levels by 2030, a more aggressive set of mandates than those established by California's landmark climate change law, AB 32, enacted in 2006.
 - AB 197: Require new oversight of the state's Air Resources Board, and require future rules to be designed with an eye toward the impact on low-income communities.

Other Major Issues: Voting

- Voting
 - SB 450:
 - Gradually encourage more mail voting
 - Use "vote centers" placed in shopping districts and locations that are believed more convenient than traditional polling places.
 - Vote centers would be open prior to election day. Starting in 2020, most counties would also mail a ballot to every single voter, though Los Angeles County is exempt.
 - AB 1921: make it easier for vote-by-mail ballots to be collected by a single person

Updates on Past Legislation



SB 406 STUDY – Enforcement of Tribal Court Money Judgments

- SB 406 (2014) – established the Tribal Court Civil Money Judgement Act, and directed the CA Law Review Commission to study the standards for recognition of a tribal court or a foreign court judgment.
- S. 406 changed the procedures for recognizing tribal court money judgments. Substantively, state courts already were required to recognize tribal court orders under California's 2005 Uniform Act.
- Three surveys: state courts, tribal courts, and tribal practitioners. Response Rates:
 - State court judges: 72%
 - Tribal court judges: 30%
 - Tribal Practitioners: 1.5%

California ICWA Compliance Report (July 2016)

- ICWA was codified in CA through S. 678 in 2006.
- The [California Indian Child Welfare Compliance Task Force](#) was created in 2015 to inform California's Bureau of Children's Justice (BCJ) of the current status of ICWA compliance in CA.
- BIA ICWA Guidelines (Feb. 2015)
- BIA ICWA Regulations (Jun. 2016)
 - [Find a comparison of the proposed regulations and Cal-ICWA here.](#)

California ICWA Compliance Report (July 2016)

- Most critical finds:
 - Lack of reliable, meaningful and accessible statewide data on Indian children
 - Lack of funding creating essentially an unfunded mandate of ICWA compliance for under resourced tribes
 - Lack of pre-removal remedial services and robust active reunification efforts
 - Failure to complete diligent inquiry and notice
 - Resistance to tribal court jurisdiction
 - Barriers to tribal participation in court processes
 - Lack of competency within court systems
 - Deviation from or violation of placement preferences.

Preliminary Final-
California ICWA Compliance
Task Force Report to the
Bureau of Children's Justice,
2016

California ICWA Compliance Report (July 2016)

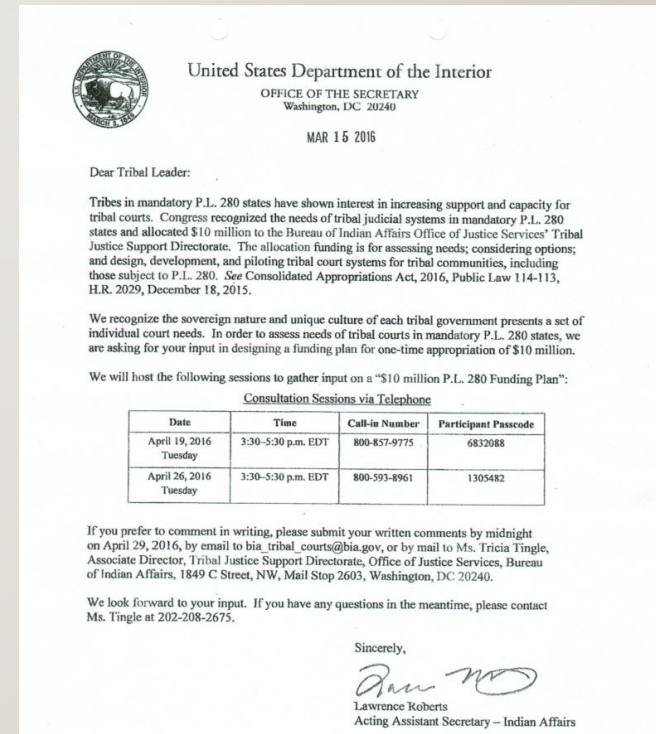
- Report Recommendations:
 - Must create and maintain an internal ICWA compliance investigative unit and bring to bear the power of the Attorney General for non-compliance
 - Must address the lack of resources for tribes, specifically the lack of appointed counsel
 - Must investigate state agencies' relationships with lobbying entities to ensure objectivity and independence
 - CA must dedicate resources to fund authentic and robust ICWA compliance, including tribal consultation

Other Happenings



TRIBAL COURT FUNDING IN CALIFORNIA

- Tribal Courts in PL 280 states have historically been denied BIA tribal court and law enforcement funding.
 - Sep. 2015 – [BIA Report](#) finds PL 280 tribal courts are currently funded at 6.14% of their need.
- Mar. 2016: Sponsored by Sen. Murkowski (R—Alaska) \$10 million dollar appropriation, for the first time, the BIA has been directed to comprehensively assess the needs of PL 280 tribal courts.



TRIBAL COURT FUNDING IN CALIFORNIA

- California Indian Legal Services and the California Tribal Court Judges' Association strongly urge you to encourage Congress to enact permanent funding for California Tribal Courts.
- Click here to get a [sample tribal letter](#), and you can use the following link to the House of Representatives directory <http://www.house.gov/representatives> to locate your Congressperson's name and address.

THANK YOU!

