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TRAINING BULLETIN

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DOJ Information Bulletin 2022-DLE-04

Clarification Regarding Law Enforcement Response to Trespass on Indian Lands

Please see the attached DOJ Information Bulletin No. 2022-DLE-04, dated March 28, 2022. DOJ Information Bulletin No. 2022-DLE-04 provides clarity regarding appropriate law enforcement response to trespass on Indian Lands.

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Clarification Regarding Law Enforcement Response to Trespass on Indian Lands¹</p>	<p><i>No.</i></p> <p>2022-DLE-04</p>	<p><i>Contact for information:</i></p> <p>Division of Law Enforcement (916) 210-6300</p>
	<p><i>Date:</i></p> <p>March 28, 2022</p>	

TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES

The California Department of Justice, Division of Law Enforcement, is issuing this Information Bulletin to provide clarity regarding appropriate law enforcement response to trespass on Indian Lands.

Penal Code section 602, subdivision (m), criminal trespass, is enforceable on Indian Lands in the state.² Under that portion of the criminal trespass law, a violation occurs when a person willfully “enter[s] and occup[ies] real property or structures of any kind without the consent of the owner, the owner’s agent, or the person in lawful possession.”

Law enforcement may enforce section 602, subdivision (m), on Indian Lands, provided that each of the criminal elements are met, regardless of whether there is a tribal exclusion order that prohibits an individual from entering and occupying the relevant real property or structures. Nevertheless, the existence of a tribal exclusion order can be evidence of a necessary element of the crime—that the individual lacked consent of the owner, owner’s agent, or person in lawful possession.

The Attorney General’s 1997 Opinion No. 96-609, 80 Ops. Cal. Atty. Gen. 46 (1997), concluded that a violation of the particular tribal exclusion order in question did not satisfy all of the elements of trespass under section 602, subdivision (m).³ Specifically, the tribal exclusion order at issue in that opinion prohibited the excluded person from entering, occupying or remaining on the reservation. However, a violation of subdivision (m) requires that the individual both enter *and* occupy real property or structures without the consent of the owner. Thus, the Opinion concluded that a violation of that tribal exclusion order alone could not be enforced as a violation of Penal Code section 602, subdivision (m). That opinion, however, did not foreclose the enforcement of Penal Code section 602, subdivision (m) where the violation of a tribal exclusion order would necessarily establish all of the elements required to establish a trespass under state law. Nor did it conclude that a tribal order was necessary for the enforcement of Penal Code section 602, subdivision (m), on Indian Lands.

Should you have any questions, please contact the Division of Law Enforcement at (916) 210-6300.

¹ For the purpose of this Information Bulletin, “Indian Lands” refers to “Indian Country,” a legal term that, for purposes of determining criminal jurisdiction, generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all tribal member allotments. (18 U.S.C. §1151).

² Public Law 83-280 (18 U.S.C. § 1162).

³ The 1997 Opinion addressed prior Penal Code section 602, subdivision (l), which is now codified at subdivision (m).