

Senate Bill No. 54

An Act relative to the protection, punishment and government of Indians

March 16, 1850 Read
first time, and ordered to second reading
J.F. Howe
Sec. Senate

March 18, 1850, Read
2d time, and re-
ferred to the Com-
mittee in the Judiciary
J.F. Howe
Sec. Senate

March 30. Read 2d
Time, and laid on the table.
J.F. Howe
Sec. Senate

March 30. Indefi-
nitely postponed.
J.F. Howe
Sec. Senate

[This bill was authored by Senator John Bidwell who represented Sacramento County in the first California Legislature. In Bidwell's absence, and at his request, the first President pro Tempore of the Senate, Ephraim Chamberlin introduced the bill for consideration on March 16, 1850.]

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Original Bill File Chapter 133, S.B. 54 1850; Location: E6553, Box 1

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An Act relative to the protection, punishment and government of Indians

The People of the State of Californian represented in Senate and Assembly do enact as follows:

Sec. 1. The Court of Sessions of each county in this State shall make an order dividing the County into not less than two, nor more than ten districts; in each of which districts shall be elected by the qualified electors of county officers, and the male Indians of the district over the age of eighteen years and natives of California, a Justice of the Peace for Indians, whose duty it shall be to hear and determine in a summary manner all suits and matters in controversy which may be brought before him, wherein an Indian is a party, except where otherwise provided in this act.

Sec. 2. The first election by virtue of this act, shall be ordered by the Court of Sessions, and notice thereof and of the time and places of holding such election shall be posted up in suitable public places in the county by the sheriff, at least ten days before the election; and he shall give notice to the Indians of the County by sending out Indian carriers with verbal instructions, or in any manner which the court shall deem expedient.

Sec. 3. Justices of the Peace for Indians, elected at the first election, shall hold their offices until the first [M]onday of June next after their election, and until their successors are duly elected and qualified, and thereafter the election shall be held annually on the first [M]onday of June of each year.

Sec. 4. Inspectors of Elections under this act, shall be appointed by the Court of Sessions of each County, and shall discharge the same duties as inspectors of County elections, and shall also procure one or more interpreters to be at the polls during the election, who shall ask every [I]ndian who is entitled to vote, whom he prefers for Justice for the Indians the ensuing year, and his vote shall be recorded for the person he prefers.

Sec. 5. Proprietors and persons in possession of lands, on which [I]ndians are residing, shall permit such [I]ndians and their descendents, peaceably to reside on such lands unmolested; and no person shall molest such [I]ndians in the pursuit of their usual avocations of hunting, fishing, gathering seeds and acorns for the maintenance of themselves and families. Provided however that the proprietors or white persons in possession of such lands, may apply to the Justice of the Peace for Indians of the district in which the land or most of it lies, to set off to such Indians a certain amount of lands in a body, including the site of their village, if they so prefer it. In such case it shall be the duty of the Justice to set-off a certain amount of land in a body not less than one acre to each [I]ndian properly residing on such tract of land; but in no case shall [I]ndians be forced to abandon their village sites where they have lived from time immemorial.

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Sec. 6. Whenever a Justice shall set off lands as in the last section provided, he shall within six days thereafter, file in the office of the Clerk of the Court of Sessions of the county, a return of his proceedings, stating the amount of land set off, and where situated, and the clerk shall immediately indorse thereon the time when the same was filed.

Sec. 7. If the proprietor or person in possession of the land, considers himself aggrieved by the proceedings of the Justice, he may appeal to the Court of Sessions, by endorsing on the return of the Justice within ten days after the same is filed, his dissent from the decision of the Justice and stating therein that he appeals; which endorsement shall be signed by him or his attorney and shall fully possess the Court of Sessions of the case, and said Court shall hear and determine the matter, and if the proceedings of the Justice be affirmed, the decision shall be final; but the Court being satisfied that injustice has been done, may appoint not exceeding three commissioners, whose duty it shall be – first having taken an oath before some officer competent to administer oaths, for the faithful discharge of their duties – to proceed and set off such lands in the same manner and make like return of their proceedings to the Court as is required of Justices of the Peace for Indians and their determination of the matter shall be final and each shall receive the same fees as are allowed Justices of the Peace for Indians for similar services.

Sec. 8. If any person shall obtain a minor [I]ndian from the parents or relatives of such [I]ndian, to keep and raise; the person so obtaining such [I]ndian shall go before the Justice of the Peace for Indians of the District, with such parents or relatives and the Justice may question them relative to the matter, and being satisfied that no compulsory means have been used to obtain the child, shall enter on record in a book to be by him kept for that purpose, the name, sex and probable age of the child, and the name (if any) given by the person taking the child, and shall give to such person a certificate, authorising him or her to have the care, custody, control and earnings of such minor, until he or she shall attain the age of majority.

Sec. 9. Every male [I]ndian shall be deemed to have attained his majority at the age of eighteen years, and every female [I]ndian at the age of fifteen years.

Sec. 10. Every person having minor [I]ndians in employ, care, custody or control, shall, if desirous of keeping them, within six months after the passage of this act, go before the Justice of the Peace for Indians of the District, and have the sex and name and probable age recorded as provided in section eight of this act, and the Justice shall issue and deliver a certificate to the applicant as is therein provided.

Sec. 11. Any person who shall obtain a minor [I]ndian in the manner provided in sections eight and ten of this act, shall be entitled to the care, custody, control, earnings and labor of such [I]ndian until he or she shall attain the age of majority.

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Sec. 12. Any person having an [I]ndian in his care or control by virtue of the eighth, tenth and eleventh sections of this act, and who shall neglect to comfortably clothe and suitably feed such [I]ndian, or shall inhumanly or barbarously treat him or her, shall on conviction thereof be fined not less than fifty nor more than two hundred dollars, and such Indian may return to his or her parents or relatives, or the Justice may place the [I]ndian in the care of some suitable person, who shall be liable to the same duties towards the Indian and entitled to the same rights over him or her, as had the person from whom he or she was taken, prior to the removal.

Sec. 13. Complaints may be made to a Justice of the Peace for Indians, either by whites or Indians, but in no case shall a white person be convicted of an offence upon the testimony of Indians only, and in all cases it shall be discretionary with the Justice after hearing the complaint of an [I]ndian, issue process or not, as he may think the case deserves.

Sec. 14. Justices of the Peace for Indians, may from time to time, as often as he shall think the public good requires it, convene all the chiefs of the Rancharias within their respective districts, and inform them in regard to the laws relative to Indians, and warn them to prevent their people from burning the prairies or woods; and if such Justice shall think advisable, he may convene all the [I]ndians in his district and instruct them in the laws, which relate to them, and give them such wholesome advice as he may deem proper.

Sec. 15. Whenever any village or tribe of Indians shall be troublesome to the whites and shall neglect to obey the Justice of the District, such Justice may have the Chiefs and principal men of the tribe or village brought before him, and may reprimand or fine or otherwise reasonably chastise them.

Sec. 16. Indians residing on lands held by a white person, by virtue of a Spanish or Mexican grant or lands belonging to the United States and in possession of white persons, and who may desire to remain and be employed by the person so holding such lands, shall not be molested by any other person, and shall be entitled to have suitable lands so held to cultivate for the maintenance of their families, and necessary and suitable firewood and fencing timber and the pasterage for horses and cattle, not exceeding for a village, an average of one horse and one cow for each Indian: provided, [I]ndians so residing upon lands, shall be free to go and work for, or be employed by any other person than the owner of or claimant of the land, if they shall desire to do so.

Sec. 17. If any Indian shall set the prairies or woods on fire, or shall neglect or refuse to use every suitable exertion when the same may chance to be on fire, to extinguish the fire, he shall be considered guilty of an offence, and fined not less than fifty nor more than one hundred dollars, and in default of payment thereof shall receive corporal punishment not exceeding one hundred lashes, or be imprisoned not exceeding six months.

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Sec. 18. If any [I]ndian shall commit an offence against a white person, such person shall not himself inflict the punishment for such offence, but may without process take the Indian before the Justice of the Peace for the Indians of the District, and on conviction thereof the Indian shall be punished according to the provisions of this act.

Sec. 19. If any person shall by force, take any minor Indian from his or her parents or relatives, against the will or consent of such parents or the near relatives, except in cases where he may be entitled to the custody of the minor [I]ndian, by virtue of this act the person so offending shall on conviction before the Justice of the Peace for the [I]ndians of the District, be fined not less than fifty nor more than five hundred dollars, & shall deliver up such minor Indian to be returned [to] his or her parents or relatives.

Sec. 20. If any person or persons shall sell, give or furnish to an [I]ndian any intoxicating liquors, except however when physicians may in good faith administer the same to [I]ndians for medical purposes, he or they shall upon convictions thereof be fined not less than fifty, nor more than three hundred dollars for each offence, or be imprisoned not less than ten nor more than sixty days, and shall be liable to pay all damages which such Indian or Indians shall commit during intoxication, one half of the fine to the informer, and the other half to the Indian fund for the District.

Sec. 21. Justices of the Peace for [I]ndians, may at any time compel the attendance of any [I]ndian to act as interpreter for him in any official business, or may in his discretion require white persons to act as interpreters, allowing them reasonable pay for their services; and such Justice may demand from the chiefs, and headmen of any tribe, village or rancharia, to apprehend and bring before him any [I]ndian charged or suspected of any offence, and also to assemble their people to quell any disturbance, or for any other purpose tending to the public good or security, and if any chief or principal man aforesaid shall neglect or refuse to comply with the demands, the Justice being satisfied that the neglect is willful, may punish such Indians as provided in section seventeen of this act.

Sec. 22. Whenever an [I]ndian shall be convicted before the Justice for Indians, of any offence punishable by fine, any white person may, by consent of the Justice become bail for the appearance of the [I]ndian, on such day as the Justice may name. The bail shall in such case, enter into bond to the State of California, in such sum as the Justice may demand, conditioned that the Indian shall appear before the justice on a certain day, therein mentioned, to receive such corporal punishment as the justice may have adjudged against him, and not depart without leave of the Justice, or pay the fine assessed by the Justice in lieu of corporal punishment, and in such case the Justice may permit the [I]ndian to work for such bail until the day set for his or her appearance, and the bail when such permission is given may compel the [I]ndian to work for him until the day set for his appearance before the Justice.

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Sec. 23. Bail Bonds taken by Justices of the Peace for Indians, shall be recoverable in the same manner as Bonds taken by any other Justice of the Peace.

Sec. 24. Indians shall not be held liable on any contract made with a white person, except where the same shall have been made with the consent of the Justice of the Peace for Indians of the District, or by him satisfied.

Sec. 25. Justices of the Peace for Indians shall have the same jurisdiction over [I]ndians in capital cases as other Justices of the Peace have over white persons.

Sec. 26. Indians convicted of any crime or misdemeanor before a Justice of the Peace for Indians shall be punished as follows: If the conviction be for stealing horses, mules, cattle, sheep or hogs, the prisoner shall be sentenced to receive any number of lashes not exceeding one hundred on his bare back; if the conviction be for any other crime or offence cognizable before such Justice, the punishment shall be any number of lashes not exceeding sixty, or such fine as the Justice may assess not exceeding one thousand dollars; provided that whenever an Indian shall be convicted before a Justice for any offence, he or she shall in no case be permitted to go at large until the corporal punishment shall have been inflicted, the fine paid, or bail given for the appearance of the prisoner according to the provisions of the twenty second section of this act.

Sec. 27. Justices of the Peace for Indians shall be entitled to the same fees as are allowed other Justices of the Peace for similar services, and shall also be entitled to _____ dollars per day for every day necessarily employed in setting off any lands under the provisions of this act, to be paid by the white person making the application, and also the sum of _____ dollars for every contract they are called upon to consent to or ratify, which shall in all cases be paid by the person making the application, before the contract is consented to or ratified by the Justice, and whenever no other provision is made by law for payment for services required to be performed by Justices of the Peace for Indians, they shall receive such compensation as may be allowed by them by the Court of Sessions, to be paid out of the Indian fund of the District.

Sec. 28. There shall be in each county a fund called the Indian fund, to be held and kept in the treasury of the County as other funds of the County, and paid out in the same manner, but shall be kept separate and distinct for each District.

Sec. 29. All fines, forfeitures, penalties and recoveries accruing under or by virtue of this act shall be paid into the treasury of the County for the use and benefit of the Indian fund of the district where the fine, forfeiture, penalty or recovery accrued.

Sec. 30. Process issued by a Justice of the Peace for Indians, may be executed by any constable of the county where the Justice resides, or by any person appointed by the Justice.

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Sec. 31. Whenever a Justice of the Peace for Indians shall sentence an [I]ndian to be whipped, the Justice may appoint any suitable person of his district to execute the sentence, either [I]ndian or white person, and shall see that the whipping is not inflicted in a cruel or barbarous manner.

Sec. 32. The jurisdiction of Justices of the Peace for Indians, shall be co-extensive with the district within which they are elected.

Sec. 33. The same fees shall be allowed constables and other white persons, for the service of process issued by a Justice of the Peace for Indians, as is allowed for the service of similar process issued by other Justices of the Peace, and witnesses shall be entitled to the same fees as are allowed in cases before other Justices of the Peace, but no allowance shall be made to any [I]ndian witness, unless the Court shall deem otherwise.

Sec. 34. All costs accruing under this act, which cannot be made off of the [I]ndian or white person against whom judgement shall be recovered, and all costs adjudged against the county in cases arising under the provisions of this act, shall be paid out of the Indian fund, and not otherwise.

Sec. 35. Appeals from the judgement of Justices of the Peace for Indians, may be taken by white persons for the same causes, in the same manner and to the same courts as appeals from other Justices of the Peace.

Sec. 36. If any person shall convey or attempt to convey any Indians to labor in the mines against their will, he shall be fined not less than fifty nor more than five hundred dollars. It shall be the duty of every person desirous of employing [I]ndian labor in the mines, to go before the Justice of the Peace for Indians of the District where such Indians reside, with the Indians or their chief, and have the contract ratified but no such justice shall authenticate any contract against the will of the Indians, nor for a longer period than ____ months.

Sec. 37. No person shall purchase or exchange other lands, for any lands belonging to or set off to Indians except by consent of the Court of Sessions, to the entire satisfaction of the Indians.

Sec. 38. When minor Indians attain their majority, and desire to leave the persons who have had the care of them, such persons shall pay to such Indians in useful property the value of fifty dollars if a female, and one hundred dollars if a male, and two good suits of clothes.

Sec. 39. Indians may be sentenced by the Justice for Indians, to labor upon highways in all cases where he may deem expedient and proper.

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Sec. 40. The Justice of the Peace for Indians may order a jury to sit upon any civil case between a white person and an Indian, with the consent of such white person; and in such case the decision of the jury shall be final.

Sec. 41. If in any case the Court of Sessions shall not deem it practicable to make a division of a county into districts as set forth in section first of this act, the court may designate the several villages or [I]ndians, naming their tribe and other marks of distinction to pertain to the jurisdiction of the several Justices of the Indians respectively.