



LAW OFFICES OF
CHRISTOPHER W. MILLER
ATTORNEY AT LAW

PROTECTING THOSE WHO PROTECT AND SERVE

LABOR LAW • DISCIPLINE DEFENSE • EMPLOYMENT LITIGATION • CONTRACT NEGOTIATIONS • TRAINING

CLIENT BULLETIN

UPDATED: CALIFORNIA'S PENDING "POLICE REFORM" BILLS

September 4, 2020

On August 31, 2020, the California Legislature ended its 2020 legislative session. Several of the bills California's legislators had proposed to implement "police reform" after the death in custody of George Floyd failed, while some key measures passed and are on their way to Governor Newsom's desk.

Here is an *updated* summary of the proposed legislation:

AB 66 (Gonzalez) Ban on Crowd Control Devices - FAILED

This bill prohibits the use of less-lethal projectiles (e.g., bean bag rounds, rubber bullets) and chemical agents (e.g., tear gas, pepper spray) against "any assembly, protest, demonstration, or other gathering of people" except when "objectively reasonable" to defend against injury and all other means for dispersing the crowd have been exhausted. The bill requires law enforcement agencies to report monthly to the state Department of Justice on use of force incidents that result in serious bodily injury or death and beginning in 2023 to report on the use of chemical agents and less-lethal projectiles that result in injury.

AB 329 (Kamlager) Restitution for Excessive Force Claims - FAILED

This bill replaced original language penalizing assaults in hospitals with urgency legislation making persons who claim to be the victim of excessive force eligible for restitution from the California Victim Compensation Board. The bill revises the definition of a compensable "crime" to include the use of excessive force, whether or not the officer is charged. The bill also prohibits the Victim Compensation Board from denying an application for restitution based on the claimant's involvement in the crime, the claimant's failure to cooperate with police, or the lack of a police report.

SACRAMENTO: 8950 CAL CENTER DRIVE, SUITE 108 • SACRAMENTO, CA 95826

BAY AREA: 825 WEBSTER STREET, SUITE A • FAIRFIELD, CA 94533

(916) 382-4980 (O) • (916) 956-6361 (M) • (916) 368-5820 (F)

CMILLER@CHRISMILLERLAW.NET • WWW.CHRISMILLERLAW.NET

AB 1022 (Holden) Consequences for Use of Force - FAILED

This legislation adds to the list of reasons that disqualify applicants from becoming a peace officer any person found by a law enforcement agency employer to have used excessive force resulting in great bodily injury or death or to have failed to intercede in such an incident. The bill appears to be intended to prevent peace officers disciplined for using unreasonable force at one department from getting a job with another agency.

AB 1022 also makes an officer who failed to intercede when observing another officer using excessive force an accessory under Penal Code section 33 to any crime charged against the other officer. The officer who failed to intercede must be disciplined to the same degree as the other officer.

AB 1185 (McCarty) Sheriff Oversight Boards – PASSED – TO GOVERNOR

First introduced in 2019, this bill gives county boards of supervisors authority to create a civilian oversight board and an office of inspector general to supervise and investigate the county sheriff's department. The bill gives the oversight boards subpoena powers and other authority to hold hearings and obtain documents. The City and County of San Francisco is advancing a similar measure to impose a civilian oversight board and inspector general on the San Francisco Sheriff's Office. Whether the state or a local legislature has the constitutional authority to impose oversight on an elected sheriff is in dispute.

AB 1196 (Gipson) Chokehold Ban – PASSED – TO GOVERNOR

Another urgency statute, AB 1196 prohibits law enforcement agencies from authorizing carotid restraints, chokeholds, or any other "techniques or transport methods that involve a substantial risk of positional asphyxia". Governor Newsom previously called for the restrictions, which already were in place in some agencies.

AB 1314 (McCarty) Use of Force Lawsuits - FAILED

Citing the aftermath of the George Floyd incident and the cost to cities and counties of paying civil settlements and judgments rendered against police and sheriff's departments, this bill requires local governments and the California Transportation Agency (for the CHP) to post on their websites every year the settlements and judgments it paid for cases involving use of force. The bill is notable for its strident anti-law enforcement rhetoric.

AB 1506 (McCarty) Use of Force Investigations – PASSED – TO GOVERNOR

A bill regulating solid waste disposal, appropriately, was "gutted and amended" to create the "Statewide Officer-Involved Deadly Force Investigation Division" within the Department of Justice. The bill creates three teams charged with conducting an independent investigation, at the request of a local law enforcement agency or district

attorney, of any use of force incident in the state that resulted in the death of an unarmed civilian. The division is required to prosecute the involved officer if criminal charges are warranted. State DOJ assists already with local agency investigations into officer-involved shootings. However, deputy attorneys general have been reluctant to prosecute officers, especially in homicide cases, preferring to leave such prosecutions to the local DA.

AB 1652 (Wicks) Protesters - FAILED

This bill prohibits law enforcement officers from using force and “corralling” tactics against protesters. The bill also mandates that any officer who obscures a badge or nametag must be suspended, makes it harder to prosecute persons who are resisting arrest or interfering with law enforcement, and authorizes damages of up to \$25,000 to be awarded to anyone who is detained or arrested for certain acts of resistance or interference.

AB 1709 (Weber) Use of Force - FAILED

The author of last year’s [AB 392](#) proposes to undo that legislation by requiring officers to disengage and retreat from any encounter where the officer may have to use force. Contrary to the original language reiterating that a peace officer making an arrest need not retreat in the face of resistance, this bill requires officers to deescalate to avoid the use of force, to render medical aid, and to prevent other officers from using force. While the bill does not restore language from the original legislation imposing criminal penalties on officers who do not retreat or intercede, it makes it more likely officers who use deadly force will be prosecuted for having failed to exhaust every possible alternative.

SB 731 (Bradford) Peace Officer Licensing - FAILED

This bill creates a Peace Officer Standards Accountability Division within POST to investigate and prosecute claims against a peace officer’s certification. The bill also creates a nine-member Peace Officer Standards Accountability Advisory Board to make recommendations for action against an officer’s certification. The Advisory Board is to include civilians who “were subject to wrongful use of force” by a peace officer and former internal affairs investigators. The bill also denies the defense of qualified immunity to peace officers and law enforcement agencies.

SB 776 (Skinner) Peace Officer Records - FAILED

This bill further erodes the privacy protections for peace officer personnel records by making every incident involving use of force a matter of public record and removing the requirement that allegations of sexual misconduct and dishonesty be proven before they can be released to the public. The bill mandates disclosure of incidents of alleged prejudice or discrimination by officers as well as cases in which the officer resigned while an investigation was pending. The bill removes the five-year rule on disclosure of records in response to a *Pitchess* motion and imposes requirements for background checks of peace officer applicants. The bill requires records of peace officer misconduct to be retained for 30 years.

Some Observations

These bills have in common three assumptions: (1) all force used by law enforcement other than to prevent imminent, actual harm is by its nature “excessive” or unreasonable; (2) peace officers, as a class of public employee, are not entitled to any special rights; and (3) attacking and overregulating law enforcement is the easiest way to demonstrate a commitment to social justice. The Legislature continues to move away from the U.S. Supreme Court’s *Graham v. Connor* standard requiring force to be “reasonable”, instead emphasizing that force must be used only when there is no other alternative. There are several other legislative efforts, such as reducing probation terms and prohibiting teenagers from being tried as adults, that mark California’s shift away from traditional responses to criminal activity.

How civilians and governments treat law enforcement, and how law enforcement officers and agencies are perceived as treating civilians, has long been a barometer for the state of our society. The interplay of race, crime, history, order and anarchy has never been so dramatic as in these times. Until the pendulum of public policy swings back to the center, the next few years are likely to see even more sweeping changes to the criminal justice system and to the rights and responsibilities of the peace officers who work within it.

© 2020 Law Offices of Christopher W. Miller