
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2361 **Hearing Date:** June 21, 2016
Author: Santiago
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Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Reserve Peace Officers: Private Universities*

HISTORY

Source: University of Southern California; California College and University Police Chiefs Association

Prior Legislation: Senate Bill 1126 (Presley) – 1991, relevant portion of the bill removed

Support: University of Southern California; University of California, Los Angeles; Claremont College Campus Safety Department; California Association of Code Enforcement Officers; California Narcotic Officers Association; Los Angeles County Professional Peace Officers Association; Association for Los Angeles Deputy Sheriffs; Los Angeles Police Protective League; Riverside Sheriffs Association; Western Association of Campus Law Enforcement; one individual

Opposition: American Civil Liberties Union of California; California Public Defenders Association

Assembly Floor Vote: 71 - 3

PURPOSE

The purpose of this legislation is to allow local law enforcement agencies to deputize or appoint reserve officers at private universities, as specified.

Existing law provides whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve park ranger, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, a reserve officer of a school district police department under Section 35021.5 of the Education Code, a reserve officer of a community college police department under Section 72330, a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, or a reserve housing authority patrol officer employed by a housing authority defined in subdivision (d) of Section 830.31, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section

832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency. (Penal Code § 830.6 (a)(1).)

Existing law provides whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, community college district, or school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1. A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, or in the case of a reserve housing authority patrol officer, the powers and duties that are authorized in subdivision (d) of Section 830.31, and a school district reserve police officer or a community college district reserve police officer has the powers and duties authorized in Section 830.32. (Penal Code § 830.6 (a)(2).)

Existing law states that the following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they successfully complete a course in the exercise of those powers pursuant to Section 832:

- Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.
- Persons regularly employed as security officers for independent institutions of higher education, recognized under subdivision (b) of Section 66010 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or the chief of police within whose jurisdiction the institution lies.
- Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, that are owned and operated by cities, counties, and cities and counties, as specified .
- Employees or classes of employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and Fire Protection, as specified.
- Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as defined in Section 99213 of the Public Utilities Code, as specified.
- Nonpeace officers regularly employed as county parole officers pursuant to Section 3089.

- Persons appointed by the Executive Director of the California Science Center pursuant to Section 4108 of the Food and Agricultural Code.
- Persons regularly employed as investigators by the Department of Transportation for the City of Los Angeles and designated by local ordinance as public officers, as specified.
- Persons regularly employed by any department of the City of Los Angeles who are designated as security officers and authorized by local ordinance to enforce laws related to the preservation of peace in or about the properties owned, controlled, operated, or administered by any department of the City of Los Angeles and authorized by a memorandum of understanding with the Chief of Police of the City of Los Angeles permitting the exercise of that authority..
- Illegal dumping enforcement officers or code enforcement officers, as specified.

(Penal Code §830.7.)

Existing law provides that every person deputized or appointed shall have the powers of a peace officer only when the person is any of the following:

- A level I reserve officer deputized or appointed pursuant to paragraph (1) or (2) of subdivision (a) or subdivision (b) of Section 830.6 and assigned to the prevention and detection of crime and the general enforcement of the laws of this state, whether or not working alone, and the person has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training. For level I reserve officers appointed prior to January 1, 1997, the basic training requirement shall be the course that was prescribed at the time of their appointment. Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.
- A level II reserve officer assigned to the prevention and detection of crime and the general enforcement of the laws of this state while under the immediate supervision of a peace officer who has completed the basic training course for deputy sheriffs and police officers prescribed by the Commission on Peace Officer Standards and Training, and the level II reserve officer has completed the course required by Section 832 and any other training prescribed by the commission. Level II reserve officers appointed pursuant to this paragraph may be assigned, without immediate supervision, to those limited duties that are authorized for level III reserve officers pursuant to paragraph (3). Reserve officers appointed pursuant to this paragraph shall satisfy the continuing professional training requirement prescribed by the commission.
- Level III reserve officers may be deployed and are authorized only to carry out limited support duties not requiring general law enforcement powers in their routine performance. Those limited duties shall include traffic control, security at parades and sporting events, report taking, evidence transportation, parking enforcement, and other duties that are not likely to result in physical arrests. Level III reserve officers while assigned these duties shall be supervised in the accessible vicinity by a level I reserve officer or a full-time, regular peace officer employed by a law enforcement agency authorized to have reserve officers. Level III reserve officers may transport prisoners without immediate supervision. Those persons shall have completed the training required under Section 832 and any other training prescribed by the commission for those persons.

(Penal Code § 832.6 (a)(1)-(3).)

Existing law states that a reserve officer who has previously satisfied the training requirements stated, and has served as a level I or II reserve officer within the three-year period prior to the date of a new appointment shall be deemed to remain qualified as to the Commission on Peace Officer Standards and Training requirements if that reserve officer accepts a new appointment at the same or lower level with another law enforcement agency. If the reserve officer has more than a three-year break in service, he or she shall satisfy current training requirements. This training shall fully satisfy any other training requirements required by law, including those specified in Section 832. (Penal Code §832.6(a)(5).)

This bill provides that, notwithstanding subdivision (b) of Section 830.7, a person regularly employed as a security officer for an independent institution of higher education recognized under subdivision (b) of Section 66010 of the Education Code may be deputized or appointed by the sheriff or the chief of police of the jurisdiction in which the institution is located as a reserve deputy or officer pursuant to Section 830.6, notwithstanding that he or she is compensated by the institution of higher education or that the assigned specific law enforcement functions and duties may be of a recurring or continuous nature, if both of the following requirements are met:

- The person meets the requirements specified in Section 832.6, as specified.
- The institution of higher education and the appropriate local law enforcement agency have entered into a memorandum of understanding.

This bill provides that the authority of a person designated as a peace officer pursuant to this section applies only while he or she is engaged in the performance of his or her assigned duties, as specified.

This bill provides that vehicles owned by institutions of higher education that are specifically designated for use by the institutions' employees who are designated as reserve deputies or officers pursuant to this section shall be deemed authorized emergency vehicles for all purposes of the law within the jurisdictions specified by the sheriff or the chief of police.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed

capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.” (Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for Legislation

According to the author:

In California, limited peace officer status is granted to security officers employed by the University of California, California State University, and California community colleges (Penal Code § 830.2 and 830.32; Education Code § 92600, 89560, and 72330). Unlike their counterparts at public institutions, security officers at various independent institutions of higher education are not classified as peace officers, and therefore lack equivalent powers. This current arrangement limits the provision of an appropriate level of campus security.

California statute offers two opportunities for enhanced security capabilities at private, non-profit independent colleges: reserve officers (P.C. § 830.6) and limited powers of arrest (P.C. § 830.7). However, these remedies remain inadequate. First, statute is unclear on whether all independent institutions of higher education can utilize reserve officers. Second, limited powers of arrest are not sufficient for the increasingly unique security situations present on college campuses.

AB 2361 clarifies that independent institutions of higher education can utilize reserve officers. This measure allows security officers employed by independent institutions of higher education to be deputized or appointed by the sheriff or chief of police of the jurisdiction in which the institution is located as a reserve deputy or officer, provided (1) the individual being deputized or appointed has met specified training requirements and

(2) the institution has a memorandum of understanding (MOU) with local law enforcement that permits this action. This measure will help improve campus safety at independent institutions of higher education.

2. Prior-POST Feasibility Study

The Penal Code states that any person or persons desiring peace officer status “shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating that person or persons as peace officers.” (Penal Code § 13540(a). And, any person or persons who are designated as peace officers “who desire a change in peace officer designation or status, shall request the Commission on Peace Officer Standards and Training to undertake a study to assess the need for a change in designation or status.” (Penal Code § 13540(b).)

In October 1990, the Association of Independent California Colleges and Universities requested a peace officer feasibility study regarding peace officer positions for private colleges and universities described in Senate Bill 1126 (Presley, of 1991).¹ The study was to focus on Stanford University, University of the Pacific, and University of Southern California.

The POST study found:

Peace officer authority is one appropriate means to provide for the safety and security of private educational institutions. However, law enforcement officers and university security officers do not agree on the need for peace officer authority for private university security departments. This difference of opinion also exists among the other states contact in this study.

The three institutions which are the focus of this study have demonstrated a need for a security program. However, this need should not be presumed to exist at other private educational institutions. Senate Bill 1126 does not require a demonstration of need by institutions which are not the subject of the study.

Because alternate models exist to provide security services to private colleges and universities, it is inappropriate to create a new category of peace officer solely for the use of private educational institutions. Additionally, the creation of a new category of peace officer must follow the public policy decision by the Legislature to delegate governmental police power to private enterprise.

(A Report to the Legislature and the Association of Independent California Colleges and Universities on Peace Officer Feasibility Study, October 1991.)

¹ SB 1126, introduced in March 1991, would have bestowed upon any private, accredited, postsecondary educational institution the authority to employ peace officers.

The study, thus, recommended:

The Commission recommends the public policy issue, the delegation of governmental policy power to a private entity, be decided by the Legislature before a new peace officer category is created.

The Commission further recommends that employees of private universities and colleges not be designated as peace officers. (*Id.*)

The report outlined five alternative models for campus security including:

Utiliz[ing] reserve peace officers of the local agency in which the educational jurisdiction the educational institution is located.

This is the model employed by Stanford University and University of the Pacific.

Issues related to the proper and legal use of reserve officers exist in this model. Issues include civil liability; supervision and management of a law enforcement program by the appointing authority; and, concerns regarding the continued use of this alternative. (*Id.*)

3. Reserve Officers at Private Universities: Stanford University and University of the Pacific

Penal Code section 830.6 provides local law enforcement with the ability to deputize or appoint reserve officers. In 1973, Assemblymember Dixon Arnett requested an Attorney General Opinion on the following question:

May a sheriff assign specific peace officer functions of a continuing nature to a reserve deputy under section 830.6 of the Penal Code, although the reserve officer is paid by another entity?

The Attorney General opinion concluded:

Under state law, a sheriff may assign specific law enforcement functions to his reserve deputies even though they are paid by another entity and the assigned duties may be of a recurring or continuous nature. Such deputies are peace officers only while performing their assigned duties in behalf of the sheriff. (*California Attorney General's Opinion, 56 Ops. Cal. Atty. Gen. 390 (1973.)*)

Both the University of the Pacific and Stanford University depend on this interpretation of 830.6 to support their use of reserve officers for campus security. As stated above, there are issues related to the use of reserve officers for campus security, including supervision and liability. The MOU between Stanford and the Sheriff of the County of Santa Clara clearly addresses these issues. The MOU begins by stating:

In order to provide for the assignment of certain specific police functions to qualified members of the Stanford University Department of Public Safety, and in compliance with the request of the University, the Sheriff of the County of Santa Clara will deputize

Reserve Deputy Sheriffs (under Section 830.6 of the Penal Code) under conditions herewith set forth.

The MOU specifies that:

All persons to be deputized as Stanford Reserves pursuant to his memorandum must:

- A. be employed full time by the Stanford University Department of Public Safety;
- B. meet the minimum standards for employment as prescribed by the California Commission on Peace Officer Standards and Training and such further reasonable qualifications deemed necessary by the Sheriff;
- C. meet the minimum standards for training as prescribed by the California Commission on Peace Officer Standards and Training for Level I Reserve Deputy Sheriffs as described in Sections 830.6 and 832.6 of the California Penal Code and such further reasonable standards for training as required by the Sheriff;
- D. be recommended for such deputization by the Chief and approved by the Sheriff or his/her designee.

With regard to management and supervision the MOU states:

The Sheriff's oversight and operational authority under this Agreement will be carried out by a Captain employed by the Santa Clara Officer of the Sheriff who shall act at the direction of the Sheriff in policy matters and at the direction of the Chief² in operational matters, unless specifically directed by the Sheriff. . .

Stanford University agrees to fund the Captain position discussed immediately above and will pay, in quarterly installments, that amount equaling the annual salary and benefits which the Captain receives from the Santa Clara County Officer of the Sheriff.

The MOU, additionally, addresses liability:

Stanford University will provide for its own coverage for any potential liability arising from actions of the Stanford Reserves . . . pursuant to the Memorandum and in the event that additional premiums are necessary in order that the Stanford Reserves be covered by the false arrest insurance provided by the County of Santa Clara, Stanford University will agree to pay the additional amount. The University will also agree to indemnify, save harmless and defend the County of Santa Clara and its officers, agents and employees from all liability or claims for money or damages, arising from any alleged negligent or wrongful acts or omissions of on-duty Stanford Reserves and/or Stanford University excluding any such alleged negligent or wrongful acts or omissions done at the express and specific direction of the Sheriff or any Sheriff's representative.

Finally, the MOU sets forth a process for internal affairs investigations:

The Sheriff will review and approve Stanford University Department of Public Safety policies guiding Internal Affairs investigations. The Stanford University Department of Public Safety will notify the Sheriff whenever it intends to conduct an Internal Affairs

² According to the MOU, the "operational control and supervision of Stanford Reserves for such functions performed as private citizen employees of Stanford University shall be exercised by the Chief. . ."

investigation on a matter that meets the requirements of the Santa Clara County Sheriff's Office General Orders for conducting an Internal Affairs Investigation. The Sheriff may elect to take responsibility for such investigation.

4. Effect of this Legislation

While the University of the Pacific and Stanford both have agreements with local law enforcement to use reserve officers, University of Southern California has not been able to utilize reserve officers. According to information provided to the committee, this is because the statutes do not clearly allow for this practice. This legislation would, thus, make it clear in the Penal Code that local law enforcement agencies could deputize or appoint reserve officers at private universities in their jurisdiction, even though those officers are being paid by another entity.

5. Argument in Support

According to the University of Southern California:

In California, unlike their counterparts at public institutions, security officers at public institutions, security officers at private institutions are not classified as peace officers, limiting their ability to protect their campus community. Campus administrators need to be able to provide assurance to their communities that campus safety officials will not only take proactive measures to prevent campus violence, but will also effectively respond to any acts of violence and thereby minimize harm to the communities. Campus violence, in particular campus shooting incidents, has been occurring with increasing frequency. In addition, many universities are major centers of research and would also be considered attractive targets for acts of terrorism.

6. Argument in Opposition

The American Civil Liberties Union states, with regard to the previous version of the bill:

Penal Code section 13540 requires that "Any person or persons desiring peace officer status...shall request the Commission on Peace Officer Standards and Training to undertake a feasibility study regarding designating that person or persons as peace officers." By failing to require such a study, this bill would violate Penal Code section 13540. The requirements of Penal Code section 13540 were enacted precisely because so many groups would like peace officers authority extended to them. This reflected in the Legislature's understanding that it is frequently approached with such requests but the decision is too important to be dealt with in the absence of an objective evaluation of the need.

Additionally, this bill would grant the powers reserved for peace officers in making arrests and in the use of force without any of the accountability that accompanies these awesome powers. The power given to police officers should never be divorced from the democratic institutions that confer that power and regulate its use. Despite their status as peace officers, these private employees would not be accountable to the public in any way.

At a time when communities throughout the country are striving for greater accountability for their public police agencies, the Legislature should not be conferring police powers on private parties with no public accountability whatsoever.

-- END --