
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 71 **Hearing Date:** July 14, 2015
Author: Rodriguez
Version: July 6, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Criminal Justice: Reporting*

HISTORY

Source: Author

Prior Legislation: None known

Support: California Police Chiefs Association; California Public Defenders Association;
Legal Services for Prisoners with Children; Los Angeles Urban League

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this legislation is to require law enforcement agencies to report all instances when a peace officer is involved in: 1) an incident involving the shooting of a civilian by a peace officer; 2) an incident involving the shooting of a peace officer by a civilian; 3) an incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; and 4) an incident in which use of force by a civilian against a peace officer results in serious bodily injury or death, as specified.

Existing law provides that it is the duty of each city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, as well as other agencies or persons dealing with crimes and criminals or with delinquency or delinquents, when requested by the Attorney General (AG):

- To install and maintain records needed for the correct reporting of statistical data required by the AG;
- To report statistical data to the Department of Justice (DOJ) at those times and in the manner that the AG proscribes; and,
- To give to the AG, or his or her accredited agent, access to the statistical data for the purpose of carrying out the purposes of carrying out the relevant law.

(Penal Code § 13020.)

Existing law requires each sheriff and chief of police to annually furnish the DOJ, in the manner prescribed by the Attorney General, a report of all justifiable homicides committed in his or her jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report the homicide. (Penal Code § 13022.)

Existing law states that, subject to the availability of adequate funding, the AG shall direct local law enforcement agencies to report to DOJ, in a manner to be prescribed by the AG, any information that may be required relative to hate crimes, as specified, and requires, on or before July 1 of each year, DOJ to submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies. (Penal Code § 13023(a) and (b).)

Existing law includes within DOJ's annual reporting requirements the number of citizens' complaints received by law enforcement agencies. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only. (Penal Code § 13012(e).)

Existing law mandates in any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the AG, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. Proscribes that these writings are public records within the meaning of the California Public Records Act and are open to public inspection, except confidential medical information. (Government Code § 12525.)

This bill would require, beginning January 1, 2017, each law enforcement agency to annually furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- An incident involving the shooting of a civilian by a peace officer;
- An incident involving the shooting of a peace officer by a civilian;
- An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death; or
- An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

This bill would require, for each incident reported, law enforcement to report, at a minimum:

- The gender, race, and age of each individual who was shot, injured, or killed;
- The date, time, and location of the incident;
- Whether the civilian was armed, and, if so, the type of weapon the civilian had;
- The type of force used against the officer, the civilian, or both, including the types of weapons used;
- The number of officers involved in the incident;

- The number of civilians involved in the incident; and,
- A brief description regarding the circumstances surrounding the incident which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

This bill requires the DOJ to include a summary of information contained in the reports received pursuant to this legislation in its annual crime report issued by the department pursuant to Section 13010. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same.

This bill defines "serious bodily injury" as "bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ."

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:

Several incidents of police involvement in the deaths of individuals, has resulted in national protests, civil unrest and even the targeting and death of peace officers.

These events have sparked a vigorous debate about law enforcement's relationship with minority communities and police use of force doctrine and what can be done to improve confidence and safety of our citizens and law enforcement.

There is unfortunately, no statewide database that contains reliable statistics on officers involved in shootings or officers who have been wounded or killed. Without this information we are left with anecdotal reports or information that is often taken out of context.

While many California law enforcement agencies currently release an officer involved shooting report to their local communities, they do not submit this information to a centralized database. These reports generally do not track the shooting death and injury of law enforcement officers.

As a result, there is no statewide database on officer involved shootings. Not having an overall picture in the state results in some reported events being anecdotal or out of context.

AB 71 was introduced to collect needed statistics and to start a dialogue as to what California needs to do to increase community and officer safety and to improve confidence in law our enforcement agencies and personnel.

AB 71 will provide much needed data on officer involved shootings in California. This will allow the state to study the issue and to appropriately adjust law enforcement training and procedures as needed. Through better training standards from POST (Peace Officer Standards and Training) we can improve outcomes and foster better relations and confidence with our communities.

AB 71 will also track data on an officer involved shooting where it is the law enforcement officer that is shot and killed or injured. Law enforcement work is dangerous and our peace officers are often placed in situations that involve life and death decisions. Tracking shootings of law enforcement officers will give California an idea what our law enforcement officers are facing on the street.

I have begun discussions with the Department of Justice, law enforcement agencies and rank and file peace officers to create a reporting and tracking system that will improve training and response and will ensure that our communities are safe.

2. President's Task Force on 21st Century Policing

On December 18, 2014, amid protests in Ferguson, Missouri, where a grand jury declined to criminally charge police officer Darren Wilson in the fatal shooting of Michael Brown, President Barack Obama signed an Executive Order establishing the Task Force on 21st Century Policing. “The mission of the task force was to examine how to foster strong, collaborative relationships between local law enforcement and the communities they protect and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust. The president selected members of the task force based on their ability to contribute to its mission because of their relevant perspective, experience, or subject matter expertise in policing, law enforcement and community relations, civil rights, and civil liberties.” (U.S. Department of Justice's Office of Community Oriented Policing Service, *Interim Report of the President's Task Force on 21st Century Policing* (Mar. 2015), at 1.)

In addressing the issue of transparency, the task force recommended that law enforcement agencies should make all department policies available for public review and regularly post on the department's website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics. (*Id.* at 11.) Additionally, the task force recommended that when serious incidents occur, including those involving alleged police misconduct, agencies should communicate with citizens and the media swiftly, openly, and neutrally, respecting areas where the law requires confidentiality. (*Id.*)

3. “Police Reporting Information, Data, and Evidence Act of 2015”

On June 2, 2015, U.S. Senators Barbara Boxer and Cory Booker introduced the *Police Reporting of Information, Data and Evidence Act*:

This legislation that would bring transparency and accountability to law enforcement agencies nationwide by requiring states to report to the Justice Department on any incident in which a law enforcement officer is involved in a shooting, and any other instance where use of force by or against a law enforcement officer or civilian results in serious bodily injury or death. This information would help federal, state and local officials to better protect the public and law enforcement officers.

The PRIDE Act was introduced the same week that a Washington Post report revealed that 385 people were shot and killed by police nationwide since January - more than two a day. That number is more than twice the rate of fatal police shootings tallied by the federal government over the past decade, because there are currently no comprehensive federal programs to collect data on law enforcement-involved shootings and use of force. The Federal Bureau of Investigation (FBI) captures data on justifiable homicides by law enforcement officers, but reporting is voluntary and limited to instances in which a civilian is killed while committing a felony.

Similarly, there is no mandated reporting to the federal government on law enforcement officers killed or injured in the line of duty. So far, 54 officers have been killed in the line of duty and 14 officers have been shot and killed by suspects since January, according to data compiled by the Officer Down Memorial Page.

“Too many members of the public and police officers are being killed, and we don't have reliable statistics to track these tragic incidents,” Senator Boxer said. “This bill will ensure that we know the full extent of the problem so we can save lives on all sides.”

“The first step in fixing a problem is understanding the extent of the problem you have. Justice and accountability go hand in hand -- but without reliable data it's difficult to hold people accountable or create effective policies that change the status quo,” Senator Booker said. “Our legislation is vital to ensuring we have the data required to make good decisions and implement reform measures that are balanced, objective, and protect the lives of police officers and the public.”

The Boxer-Booker measure would require states to report to the Attorney General on use-of-force incidents involving officers and the public that result in serious bodily injury or death. The reports must include, at a minimum:

- The gender, race, ethnicity, and age of each individual who was shot, injured, or killed;
- The date, time, and location of the incident;
- The number of officers and number of civilians involved in the incident;
- Whether the civilian was armed with a weapon; and
- The type of force used against the officer, the civilian, or both, including the types of weapons used.

Additionally, the bill would provide grants for tip lines and hotlines to gain information regarding shootings and use of force incidents against the police. Grants may also support state efforts to develop use of force training for law enforcement agencies and personnel, including de-escalation and bias training.

There is growing momentum for better data collection on the use of force in police departments nationwide.

([https://www.boxer.senate.gov/press/release/boxer-booker-introduce-bill-to-bring-transparency-and-accountability-to-police-departments-nationwide/.](https://www.boxer.senate.gov/press/release/boxer-booker-introduce-bill-to-bring-transparency-and-accountability-to-police-departments-nationwide/))

Assembly Bill 71 would require local law enforcement to collect information that is consistent with the information that would be required by the federal legislation.

4. Criminal Statistics in California

DOJ is statutorily required to collect and maintain data and develop statistical reports related to crime and the criminal justice process in California. Local agencies are also statutorily required to maintain statistical data and provide those to DOJ.

Under existing law, local law enforcement agencies are required to report to DOJ all justifiable homicides committed in that agency's jurisdiction. (Penal Code § 13022.) Local jurisdictions must also report on the number of non-criminal and criminal complaints reported by citizens against law enforcement personnel and the number of complaints that were sustained. (Penal Code § 13012.) Arrest information from local agencies must also be provided to DOJ in order to maintain its arrest and citation database. (Penal Code §§ 13020 and 13021.) This database contains information including name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. (Office of the Attorney General, *Criminal Statistics Reporting Requirements* (April 2014), at 8.) Using statistical data from local jurisdictions, DOJ publishes an annual report on crime. (Penal Code § 13010.)

Local law enforcement is also required to, in any case in which a person dies while in the custody of the law enforcement, report in writing to DOJ, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. (Government Code § 12525.) This legislation would, additionally, require law enforcement agencies to report all instances when a peace officer is involved in:

- Any incident involving the shooting of a civilian by a law enforcement officer;
- Any incident involving the shooting of a law enforcement officer by a civilian;
- Any incident in which use of force by a law enforcement officer against a civilian results in serious bodily injury or death.
- Any incident in which use of force by a civilian against a law enforcement officer results in serious bodily injury or death.

DOJ would be required to provide this information in its annual report on crime.

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