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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 3021                      **Hearing Date:** June 18, 2024  
**Author:** Kalra  
**Version:** May 9, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Criminal procedure: interrogations*

## HISTORY

**Source:** Californians for Safety and Justice  
Silicon Valley De Bug

**Prior Legislation:** Not applicable

**Support:** ACLU California Action; California Public Defenders Association; Disability Rights California; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; LA Defensa; Oakland Privacy; Pacific Juvenile Defender Center; Smart Justice California; South Bay Community Land Trust; Multiple Individuals

**Opposition:** Association for Los Angeles Deputy Sheriffs; California Correctional Supervisors Organization, INC.; California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Peace Officers Research Association of California

**Assembly Floor Vote:** 47 - 17

## PURPOSE

***This bill establishes procedures law enforcement must follow prior to interviewing, questioning, or interrogating the family member of person who has been killed or seriously injured by a peace officer.***

*Existing law* requires a state prosecutor to investigate incidents of officer-involved use of force resulting in the death of an unarmed civilian. (Gov. Code § 12525.3 (b)(1).)

*Existing law* requires a state prosecutor to investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of a civilian if the civilian was unarmed or if there is a reasonable dispute as to whether the civilian was armed. (Gov. Code § 12525.3 (b)(2)(A).)

*Existing law* requires law enforcement to furnish written notice to victims of domestic violence at the scene with information on victims' rights and resources. (Penal Code § 13701.)

*Existing law* requires, upon the initial interaction with a sexual assault victim, a law enforcement officer to provide the victim with a card explaining the rights of sexual assault victims, including that they do not need to participate in the criminal justice system. (Penal Code § 680.2 (a).)

*Existing law* requires each department or agency in this state that employs peace officers to make a record of any investigations of misconduct involving a peace officer in the officer's general personnel file or a separate file designated by the department or agency. (Penal Code § 832.12 (a).)

*Existing law* requires every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency. (Penal Code § 832.13.)

*Existing law* provides that, to the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him. (Evidence Code, § 940.)

*Existing law* allows a department or agency that employs peace or custodial officers to release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. (Pen. Code, § 832.7 (d).)

*This bill* requires a peace officer, a prosecuting attorney, or an investigator for the prosecution, prior to commencing any interview, questioning, or interrogation, regardless of whether they are in a police station, of an immediate family member of a person who has been killed or seriously injured by a peace officer, to do both of the following:

- 1) Clearly identify themselves, including their full name and the agency they work for and whether they represent, or have been retained by, the prosecution. If the interview takes place in person, the person shall also show the person a business card, official badge, or other form of official identification before commencing the interview or questioning.
- 2) Clearly state the essence of all of the following to the person being interviewed, questioned, or interrogated:
  - a) "You have the right to ask about the status of your family member prior to answering any questions, and that information is not conditional on answering any questions."
  - b) "You are not being detained. You may leave at any time. You are not required to be taken to the police station. If you are detained at a later time, you will receive a *Miranda* warning."
  - c) "You do not have to talk to the police. You have the right to remain silent."
  - d) "Anything you say can be used as evidence in civil or criminal court."

- e) “You have the right to refuse to be recorded, photographed, or searched.”
- f) “Before speaking with law enforcement, the prosecution, or any investigator, you can consult with a trusted support person, civil attorney, or legal advocate, and you can have that person with you while you speak to the police.”

*This bill* defines “immediate family” for the purposes of this bill is the victim’s spouse, domestic partner, parent, guardian, grandparent, aunt, uncle, brother, sister, and children or grandchildren who are related by blood, marriage, or adaption.

## COMMENTS

### 1. Need for This Bill

According to the author:

The relatives of individuals affected by police violence have a reasonable expectation to transparency and information about the circumstances surrounding their loved ones' welfare, without encountering deceiving and threatening information. The harmful and immoral methods law enforcement officers use to interrogate family members of the victim not only inflict harm upon the victim and their family, but also erode trust in law enforcement. AB 3021 will affirm and empower the family members of victims of police violence to exercise their rights in interactions with law enforcement when they are at their most vulnerable.

### 2. Warning prior to interviewing family member

This bill would require law enforcement to give a Miranda-like warning prior to interviewing, questioning, or interrogating the immediate family member of person who has been killed or seriously injured by a peace officer.

According to a recent *Los Angeles Times* report:

For years, law enforcement agencies across California have been trained to quickly question family members after a police killing in order to collect information that, among other things, is used to protect the involved officers and their department, an investigation by the *Los Angeles Times* and the Investigative Reporting Program at UC Berkeley’s Graduate School of Journalism has found.

Police and prosecutors routinely incorporate the information into disparaging accounts about the people who have been killed that help justify the killings, bolster the department’s defense against civil suits and reduce the amount of money families receive in settlements and jury verdicts, according to police reports, court records and interviews with families and their attorneys.

The *Times* and the Investigative Reporting Program documented 20 instances of the practice by 15 law enforcement agencies across the state since 2008. Attorneys specializing in police misconduct lawsuits say those cases are just a fraction of what they describe as a routine practice.

(Howey, *After police killings, families are kept in the dark and grilled for information*, L.A. Times (Mar. 28, 2023) <[After police killings, California families often kept in the dark - Los Angeles Times \(latimes.com\)](#)> [last visited Mar. 26, 2024].)

“Miranda warnings” are a series of admonitions that are typically given by police prior to interrogating a suspect of a crime—they do not apply to, among others, witnesses of crime, the family members of a criminal defendant, or the family members of a person killed by police. The purpose of Miranda warnings is to advise people that have been arrested of their constitutional right against self-incrimination. They are the product of the landmark Supreme Court decision *Miranda v. Arizona* (1966) 384 U.S. 436. In deciding that case, the Supreme Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case. The Court summarized its decision as follows:

[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned. (*Id.* at 444-45.)

Generally, “Miranda warnings” are meant to inform people who are in custody of their constitutional right not to be a witness against themselves. Police are not required to speak a specific set of words but generally must convey that the person has the rights enumerated above.

Law enforcement is only required to give Miranda warnings to people “taken into custody or otherwise deprived of [their] freedom of action in any significant way”—i.e. people seized for questioning about a crime.

This bill would require law enforcement to give an admonishment similar to Miranda warnings to the immediate family members of a person killed or seriously injured by law enforcement. The author and supporters of this bill believe such a warning is necessary because of the documented use of interrogating family members of individuals harmed by police use of force to obtain information. Specifically, it would require law enforcement to state that the person has a right to ask about their family member prior questioning by law enforcement; that the family member is not detained and may leave at any time; they that do not have to speak to law enforcement; that anything they say could be used in evidence in court; that they the right not to be recorded,

photographed, or searched; and that they have the right to consult an attorney or legal advocate, and that that person can be with the family member during questioning.

### **3. Argument in Support**

Initiate Justice supports this bill stating:

In the aftermath of incidents involving police violence, families of the victim are often approached by authorities under the guise of an “interview”. Family members are told to go to the precinct, not given information about the state of their loved one, and often lied to about the incident as they are interrogated. While the family member is distressed and worried for their loved one, law enforcement uses this opportunity to coerce information about the victim’s past in order to paint a narrative about the victim or build a case against them. Such tactics not only inflict harm upon the victim and their family, but also erode trust in law enforcement. The relatives of individuals affected by police violence have a reasonable expectation of transparency about the circumstances surrounding their loved one; without being manipulated in the process.

Initiate Justice supports AB 3021 and thanks Assemblymember Kalra for this bill because it will empower families of victims to exercise their rights in interactions with law enforcement when they are at their most vulnerable.

### **4. Argument in Opposition**

The Los Angeles County Professional Peace Officers Association opposes this bill states:

While protecting the rights of family members is important, imposing rigid requirements on peace officers, prosecuting attorneys, and investigators could ultimately impede the pursuit of justice and compromise the effectiveness of law enforcement efforts. Peace officers and prosecutors are trained to conduct interviews effectively and ethically, and imposing rigid requirements could disrupt established procedures that have proven effective.

Moreover, requiring peace officers and prosecutors to disclose specified information before interviewing family members could compromise the confidentiality of ongoing investigations. This disclosure may inadvertently reveal sensitive details to individuals who are not directly involved in the case, potentially jeopardizing the integrity of the investigation or the safety of those involved.

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