
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 779 **Hearing Date:** July 13, 2021
Author: Bigelow
Version: February 16, 2021
Urgency: No **Fiscal:** No
Consultant: GC

Subject: *Peace officers: deputy sheriffs*

HISTORY

Source: San Mateo Sheriff's Office

Prior Legislation: AB 2340 (Bigelow), 2020, held Senate Appropriations
AB 524 (Bigelow), 2019, vetoed
AB 1254 (LaMalfa) Chapter 66, Stats. 2012
AB 1695 (Beall) Chapter 575, Stats. 2010
AB 2215 (Berryhill) Chapter 15, Stats. 2008
AB 151 (Berryhill) Chapter 84, Stats. 2007
AB 272 (Mathews) Chapter 127, Stats. 2005
AB 1931 (LaMalfa) Chapter 516, Stats. 2004
SB 570 (Chesbro) Chapter 710, Stats. 2003
AB 1254 (LaMalfa) Chapter 70, Stats.
AB 2346 (Dickerson) Chapter 185, Stats. 2002
SB 926 (Battin) Chapter 68, Stats. 2001
SB 1762 (Alpert) Chapter 61, Stats. 2000
AB 574 (Villaraigosa) Chapter 950, Stats. 1996

Support: California State Sheriffs' Association; County of San Mateo Board of Supervisors; Del Norte County Board of Supervisors; Del Norte County Sheriff's Employee Association; Del Norte County Sheriff's Office; Madera County; Madera County Board of Supervisors; Madera County Correctional Officers Association; Madera County Deputy Sheriff's Association; Madera County Sheriff's Office; Mono County Board of Supervisors; Mono County Deputy Sheriffs Association (MCDSA); Mono County Public Safety Officers Association (MCPSOA); Mono County Sheriff's Office; Peace Officers Research Association of California (PORAC); San Mateo County Board of Supervisors; San Mateo County Deputy Sheriff's Association

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 70 - 3

The purpose of this legislation is to add the counties of Del Norte, Madera, Mono, and San Mateo to the list of specified counties that employ deputy sheriffs to perform duties exclusively or initially related to custodial assignments, including the custody, care, supervision, security, movement, and transportation of inmates, and are peace officers whose authority extends to

any place in the state only while engaged in the performance of duties related to his or her employment.

Existing law provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, § 830.1 subd. (c).)

Existing law provides that all cities and counties are authorized to employ custodial officers who are public officers but not peace officers for the purpose of maintaining order in local detention facilities. Custodial officers under this section do not have the right to carry or possess firearms in the performance of his or her duties. However, custodial officers may use reasonable force to establish and maintain custody and may make arrests for misdemeanors and felonies pursuant to a warrant. (Pen. Code, § 831.)

Existing law provides that notwithstanding existing law, law enforcement agencies in counties with a population of 425,000 or less and the Counties of San Diego, Fresno, Kern, Napa, Riverside, Santa Clara, and Stanislaus may employ custodial officers with enhanced powers. The enhanced powers custodial officers are empowered to serve warrants, writs, or subpoenas within the custodial facility and, as with regular custodial officers, use reasonable force to establish and maintain custody. (Pen. Code, § 831.5, subd. (a).)

Existing law provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the Commission on Peace Officers Standards and Training (POST) course. (Pen. Code, § 832 subd. (b).)

Existing law provides that the enhanced powers custodial officers may carry firearms under the direction of the sheriff while fulfilling specified job-related duties such as while assigned as a court bailiff, transporting prisoners, guarding hospitalized prisoners, or suppressing jail riots, escapes, or rescues. (Pen. Code, § 831.5 subd. (b).)

Existing law provides that enhanced powers custodial officers may also make warrantless arrests within the facility. (Pen. Code, § 831.5 subd. (f).)

Existing law requires a peace officer to be present in a supervisory capacity whenever 20 or more custodial officers are on duty. (Pen. Code, § 831.5 subd. (d).)

Existing law provides that custodial officers employed by the Santa Clara County, Napa County, and Madera DOC's are authorized to perform the following additional duties in the facility:

- 1) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the

presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;

- 2) Search property, cells, prisoners, or visitors;
- 3) Conduct strip or body cavity searches of prisoners as specified;
- 4) Conduct searches and seizures pursuant to a duly issued warrant;
- 5) Segregate prisoners; and,
- 6) Classify prisoners for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5 subds. (g), (h) & (i).)

Existing law states that it is the intent of the Legislature, as it relates to Santa Clara, Madera, and Napa Counties, to enumerate specific duties of custodial officers and to clarify the relationship of correctional officers and deputy sheriffs in Santa Clara County. And, that it is the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process. The language is, additionally, clear that it should not be construed to assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs or to affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs. (Pen. Code, § 831.5 subd. (j).)

Existing law provides that every peace officer shall satisfactorily complete an introductory course of training prescribed by POST and that, after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by POST. (Pen. Code, § 832 subd. (a).)

Existing law provides that prior to the exercise of peace officer powers, every peace officer shall have satisfactorily completed the POST course. (Pen. Code, § 832 subd. (b).)

Existing law provides that a person shall not have the powers of a peace officer until he or she has satisfactorily completed the POST course. (Pen. Code, § 832 subd.(c).)

Existing law provides that any person completing the POST training who does not become employed as a peace officer within three years from the date of passing the examination, or who has a three-year or longer break in service as a peace officer, shall pass the examination prior to the exercise of powers as a peace officer. This requirement does not apply to any person who meets any of the following requirements (Pen. Code, § 832 subd. (e)(1).):

- 1) Is returning to a management position that is at the second level of supervision or higher (Pen. Code, § 832 subd. (e)(2)(A).);
- 2) Has successfully requalified for a basic course through POST (Pen. Code, § 832 subd. (e)(2)(B).);
- 3) Has maintained proficiency through teaching the POST course (Pen. Code, § 832 subd (e)(2)(C).);
- 4) During the break in California service, was continuously employed as a peace officer in another state or at the federal level (Pen. Code, § 832 subd. (e)(2)(D).); and,
- 5) Has previously met the testing requirement, has been appointed a peace officer under Penal Code Section 830.1(c), and has continuously been employed as a custodial officer as defined in Penal Code Section 831 or 831.5 since completing the POST course. (Pen. Code, § 832 subd. (e)(2)(E).).

This bill adds Del Norte, Madera, Mono and San Mateo Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to

specified custodial assignments are peace officers whose authority extends to any place in California while engaged in the performance of the duties of his or her respective employment.

COMMENTS

1. Need for This Bill

According to the author:

As public safety officers, these employees are already in uniform and occasionally have assignments that take them out of the jail setting, however they have more limited abilities in their capacity to protect the public than peace officers. In addition, counties are facing staff shortages, which can cause strain on current deputy sheriffs. This would allow them to be classified differently, which would provide a larger and more versatile staff for sheriff departments.

2. Effect of Designating Custodial Deputy Sheriffs

Penal Code § 830.1 subd. (c) custodial deputy sheriffs classification is part of a continuum of classifications of custodial officers in county jails and other local detention facilities. Custodial officers under Penal Code §§ 831 and 831.5 are not peace officers, whereas a Penal Code § 830.1 subd. (c) custodial deputy sheriff is a peace officer, “who is employed to perform duties exclusively or initially relating to custodial assignments.” (Penal Code § 830.1 subd. (c).) One of the most significant differences between the Penal Code § 830.1 subd. (c) custodial deputy sheriffs and Penal Code §§ 831 and 831.5 custodial officers is that as “peace officers” the Penal Code Section 830.1(c) custodial deputy sheriffs are granted all the rights and protections contained in the Public Safety Officers Procedural Bill of Rights Act. (Government Code § 3301 et seq.)

All counties may utilize Penal Code § 831 non-peace officer custodial officers; however, these officers may not carry firearms. (Penal Code § 831 subd. (b).) However, there are limitations on the authority and use of Penal Code Section 831.5 custodial officers. For example, Penal Code § 831.5 custodial officers may not perform strip searches (unless they are employed in Santa Clara County, Napa County, or Madera County), have limited arrest powers, and are limited in their “armed duty” roles. Another limitation on the use of both Penal Code § 831 and 831.5 non-peace officer custodial officers is that whenever 20 or more of such officers are on duty there must be at least one Penal Code § 830.1 peace officer, who has received the full 664-plus hour basic training for Penal Code § 830.1(a) deputy sheriffs, on duty at the same time to supervise the custodial officers. (Penal Code §§ 831 subd. (d) and 831.5 subd, (d).)

Limitation on the Scope of Authority Granted Under This Bill

The custodial deputy sheriffs granted authority under this bill are limited in their authority as a peace officer “only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency.” (Pen. Code, § 830.1, subd. (c).)

3. Veto of Substantially Similar Language in AB 524 (Bigelow) in 2019

In 2019 Assemblymember Bigelow ran the same content in AB 524 with the absence of Madera County in the counties covered. That bill made it all of the way to the governor with zero “NO” votes in both houses. When he vetoed the bill, the Governor penned the following veto message:

I am returning Assembly Bill 524 without my signature.

This bill would add Mono, San Mateo, and Del Norte Counties to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to custodial assignments are also considered peace officers whose authority extends generally to any place in California while engaged in the performance of their duties.

I understand these counties' desire to add additional capacity to their law enforcement efforts, but these discussions merit additional scrutiny in a more comprehensive manner. A number of bills have been enacted over recent decades-and several in recent years-applying this bill's provisions to specific counties, but this is a piecemeal approach that I cannot support.

4. Prior Expansions

AB 574 (Villaraigosa), Chapter 950, Statutes of 1996, added Penal Code Section 830.1(c), which allowed the Los Angeles County Sheriff to hire a "second tier" of sheriff's deputies who "are employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates."

SB 1762 (Alpert), Chapter 61, Statutes of 2000, and SB 926 (Battin), Chapter 68, Statutes of 2001, amended Penal Code Section 830.1(c) to provide peace officer status while on duty only to Riverside County and San Diego County deputy sheriffs employed to provide custodial care and supervision of inmates in the county jail and related facilities.

AB 2346 (Dickerson), Chapter 185, Statutes of 2002, extended the same provisions of SB 1762 to deputy sheriffs in Kern, Humboldt, Imperial, Mendocino, Plumas, Santa Barbara, Siskiyou, Sonoma, Sutter, and Tehama Counties.

AB 1254 (La Malfa), Chapter 70, Statutes of 2003, and SB 570 (Chesbro), Chapter 710, Statutes of 2003, extended the same provisions of SB 1762 to deputy sheriffs in Shasta and Solano Counties.

AB 1931 (La Malfa), Chapter 516, Statutes of 2004, extended the same provisions of SB 1762 to deputy sheriffs in Butte County.

AB 272 (Matthews), Chapter 127, Statutes of 2005, extended the same provisions of SB 1762 to deputy sheriffs in Inyo, Merced, San Joaquin, and Tulare Counties.

AB 151 (Berryhill), Chapter 84, Statutes of 2007, extended the same provisions of SB 1762 to deputy sheriffs in Glenn, Lassen, and Stanislaus Counties.

AB 2215 (Berryhill), Chapter 15, Statutes of 2008, extended the same provisions of SB 1762 to deputy sheriffs in Lake, Calaveras, Mariposa, and San Benito Counties.

AB 1695 (Beall), Chapter 575, Statutes of 2010, allowed the duties of custodial officers employed by the Santa Clara County Department of Corrections to be performed at other health care facilities in Santa Clara County, in addition to duties performed at Santa Clara Valley Medical Center.

SB 1254 (La Malfa), Chapter 66, Statutes of 2012, provided peace officer status to deputy sheriffs in Trinity and Yuba Counties employed to provide custodial care and supervision of inmates in the county jail and related facilities.

5. Argument in Support

According to the California State Sheriffs' Association:

Existing law, Penal Code Section 830.1(c), provides that any deputy sheriff in 32 specified counties who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. AB 779 adds the Counties of Del Norte, Madera, Mono, and San Mateo to PC 830.1(c) to give them more flexibility to address their custodial supervision needs.

6. Argument in Opposition

According to California Attorneys for Criminal Justice:

Being a peace officer ... confers a special status under several Penal Code provisions, e.g. ... any peace officer listed in ... Sections 830.1, 830.2, is allowed to carry firearms concealed in public while off-duty, even if that person's employing agency does not allow the officer to carry a firearm while on-duty. *Orange County Employees Assn., Inc. v. County of Orange* (1993) 14 Cal. App. 4th 575, 582. AB 779 would loosely expand the reach of Penal Code section 830.1 to enable unfettered concealed carry privileges to custodial peace officers from Del Norte, Madera, Mono, and San Mateo counties without any assurance that these officers are safely trained to carry concealed or to use deadly force in self-defense under off-duty / non-uniformed circumstances and in many densely crowded civilian environments where on-duty uniformed officers can't tell a "good guy" from a "bad guy". This is reckless.

CACJ is aware of the legislative trend to steadily expand the ambit of privilege to peace officers under section 830.1 ever since custodial deputies of certain counties declared to be peace officers during the 1996 legislative session, when subdivision (c) of section 830.1 was enacted. (Stats. 1996, ch. 950, § 1, p. 5347.) All of this history is cogently laid out by the court in Stanislaus County Deputy Sheriffs' Assn. v. County of Stanislaus (2016) 2 Cal. App. 5th 368, 380-382.

Declaring additional custodial deputies to be peace officers under section 831, subdivision (c), requires the Legislature to both understand and intend the effect: More custodial deputies, some or all of whom are not allowed to carry on-duty, will be allowed to carry a concealed weapon while off duty statewide, without the necessity of demonstrating on a biennial basis the learning and proficiency required by California Penal Code section 26150, before obtaining a separate permit from the sheriff.

In an era where the unnecessary application of deadly force by peace officers has caused so much societal harm as to necessitate the passage of AB 1506 and like bills to increase peace officer accountability in last year's session, CACJ finds that handing out concealed carry privileges to officers that may or may not have received the same biennial training required of armed civilians is antithetical to sound legislative policy. Maintaining the requirement for the custodial officers of Del Norte, Madera, Mono, and San Mateo to obtain a license to carry concealed before doing so off-duty will enhance public safety through the likelihood of responsible carry through specific biennial training. To diminish the potential for irreparable harm to the citizens of this state by adding to the numbers of those who carry concealed untethered to the safety requirements of Penal Code section 26150, CACJ strongly Opposes AB 779.

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