
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 192 **Hearing Date:** April 2, 2019
Author: Hertzberg
Version: January 30, 2019
Urgency: No **Fiscal:** Yes
Consultant: JK

Subject: *Posse Comitatus*

HISTORY

Source: Author

Prior Legislation: SB 1690 (Rainey), Ch. 760, Stats. 1998
AB 2692 (O'Connell), Ch. 273, Stats. 1990

Support: Unknown

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this bill is to repeal a provision of the law, known as posse comitatus, which makes an able-bodied person 18 years of age or older who refuses to aid a peace officer or a judge, guilty of a crime and subject to a fine between \$50-\$1000.

Existing law states that every able bodied person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county is punishable by a fine between \$50-\$1000. (Pen. Code, § 150.)

Existing law states that neglecting or refusing to join the posse comitatus includes neglecting or refusing to aid and assist peace officers in taking or arresting a person whom there may be issued any process, or retaking a person who after being arrested or confined may have escaped from arrest or imprisonment, or preventing any breach of the peace, or the commission of any criminal offense. (Pen. Code, § 150.)

Existing law states that every peace officer or other person empowered to make the arrest shall have the authority to command assistance. (Pen. Code, § 1550.)

Existing law states that failure or refusal to aid a peace officer is a violation of the code. (Pen. Code, § 1550.)

This bill will repeal California's posse comitatus statute.

COMMENTS

1. Need for This Bill

According to the author:

In California, citizens who refuse to join a posse can be held criminally liable, for which they can be fined up to \$1,000. This “posse comitatus” law is a vestige of a bygone era, and when invoked, subjects our citizens to an untenable moral dilemma: join and potentially put one’s life at risk, or refuse and become a criminal. SB 192 does away with this unnecessary penalty and helps bring California law into the 21st century.

2. Use of posse comitatus

The California Posse Comitatus Act of 1872 was created during the time when peace officers had limited resources. The legislation has roots even farther back in other parts of the United States where federal marshals formed posses to hunt and recapture escaped slaves.¹ However, according to court records it has not been invoked in the last 50 years. It has been referred to in caselaw to justify police cooperation (*People v. Agnew* (Nov. 29, 1940) 16 Cal. 2d 655; *People v. Ford* (May 19, 1965) 234 Cal. App. 2d 480). Particularly in *People v. Ford* (1965), it was used to support that, “all citizens are under statutory duty to assist public authorities in maintaining peace and in suppressing crime which at least implies duty to furnish on request information about crime to public authorities.”² Yet, there were other code sections cited as well, including a code section that states, “The sheriff shall command the aid of as many inhabitants of the sheriff’s county as he or she thinks necessary in the execution of his or her duties.” (Gov. Code § 26604.) Posse comitatus is not the basis for requiring California citizens’ cooperation with law enforcement.

3. Authority of Peace Officers

Posse comitatus has reaches beyond county police officers or sheriffs. Peace officers encompass a wide range of officials in California, including but not limited to:

- Any member of the Department of California Highway Patrol.
- A member of the University of California Police Department.
- A member of the California State University Police Departments.
- Any member of the Office of Correctional Safety of the Department of Corrections and Rehabilitation.
- Any member of the Office of Internal Affairs of the Department of Corrections and Rehabilitation.
- Employees of the Department of Fish and Game.
- Employees of the Department of Parks and Recreation.

¹ <https://www.sacbee.com/news/politics-government/capitol-alert/article225609945.html>

² *People v. Ford* (1965) 234 Cal. App. 2d 480, 44

- Director of Forestry and Fire Protection and employees or classes of employees of the Department of Forestry and Fire Protection.
- Persons employed by the Department of Alcoholic Beverage Control.
- Marshals and police appointed by the Board of Directors of the California Exposition and State Fair.

Each of these officials are allowed to utilize the power of posse comitatus.

4. Repeal posse comitatus

Posse comitatus only imposes a fine, yet according to the jury instructions posse comitatus is regarded as a misdemeanor, “commit a misdemeanor, to wit: Neglect and refusal to join posse comitatus” (Judicial Council of California Civil Jury Instructions (2019)).

This bill will repeal the posse comitatus statute.

5. Argument in Opposition

According to the California State Sheriffs’ Association:

We are unfamiliar with concerns with this statute other than it was enacted many years ago and carries a fine for a person who disobeys it. There are situations in which a peace officer might look to private persons for assistance in matters of emergency or risks to public safety and we are unconvinced that this statute should be repealed.

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