
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 368 **Hearing Date:** March 26, 2019
Author: Archuleta
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Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Public Safety Officers Procedural Bill of Rights Act*

HISTORY

Source: Communication Workers of America

Prior Legislation: AB 2830 (Salas), 2016, failed passage in Assembly Appropriations
SB 522 (Chesbro), 2001, failed passage in Senate Public Safety

Support: Unknown

Opposition: San Francisco Public Defender's Office

PURPOSE

The purpose of this bill is to include correctional officers who are employed by a city or county in facilities that have arranged to house inmates in the custody of the California Department of Corrections and Rehabilitation and juveniles in the custody of the Division of Juvenile Justice, within the Peace Officer Bill of Rights (POBOR).

Existing law states that for purposes of the (POBOR), the term "public safety officer" means peace officers listed in specified sections of the Penal Code. (Gov. Code, § 3301.)

Existing law finds and declares that the rights and protections provided to peace officers under POBOR constitute a matter of statewide concern. (Gov. Code, § 3301.)

Existing law finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations between public safety employees and their employers. (Gov. Code, § 3301.)

Existing law states that in order to assure that stable relations are continued throughout the state, and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined, wherever situated within the State of California. (Gov. Code, § 3301.)

Existing law specifies that any deputy sheriff of the County of Los Angeles, and any deputy sheriff of the Counties of 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 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, is covered by POBOR. (Pen. Code, § 830.1, subd. (c), Gov. Code, § 3301.)

Existing law specifies that a correctional officer is a peace officer, employed by a city, county, or city and county that operates a facility, as specified, who has the authority and responsibility for maintaining custody of state prison inmates or juvenile inmates, and who performs tasks related to the operation of a detention facility used for the detention of persons who have violated parole or are awaiting parole back into the community. (Pen. Code, § 830.55, subd. (a)(1).)

Existing law specifies that a correctional officer employed by a city or county who has the authority and responsibility for maintaining custody of inmates sentenced to or housed in a facility which provides housing for inmates sentenced to a county jail in community correctional facilities created to house specified state prison inmates is also a peace officer. (Pen. Code, § 830.55, subd. (a)(2).)

Existing law states that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to a county jail. (Pen. Code, § 4115.55.)

Existing law states that the Secretary of the Department of Corrections and Rehabilitation may enter into an agreement with a city, county, or city and county to permit transfer of prisoners in the custody a jail or other adult correctional facility of the city, county, or city and county, if the sheriff or corresponding official having jurisdiction over the facility has consented thereto. (Pen. Code, § 2910, subd. (a).)

Existing law specifies that the Director of Corrections may enter into a long-term agreement not to exceed 20 years with a city, county, or city and county to place parole violators and other state inmates in a facility which is specially designed and built for the incarceration of parole violators and specified state prison inmates. (Pen. Code, § 2910.5.)

Existing law provides that the Director of the Youth Authority may enter into an agreement with a city, county, or city and county, to permit transfer of wards in the custody of the Director of the Youth Authority to an appropriate facility of the city, county, or city and county, if the official having jurisdiction over the facility has consented. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to the transferred wards. (Welf. & Inst. Code, § 1753.3.)

This bill includes correctional officers who are employed by a city or county, in facilities that have arranged to house inmates in the custody of the California Department of Corrections and Rehabilitation and juveniles in the custody of the Division of Juvenile Justice, within the Peace Officer Bill of Rights (POBOR).

COMMENTS

1. Need for This Bill

According to the author:

In 1977, Governor Jerry Brown enacted the California Peace Officers Procedural Bill of Rights, establishing the right and obligations regarding the discipline of peace officers in the state. The Great Recession then forced the closure of Community Correctional Facilities that were administered by small municipalities.

In 2013, the State began to contract with the impacted municipalities to begin retrofitting the closed facilities. To accommodate the reopening of these correctional centers, in 2012, the State enacted SB 1351 to create a new classification of peace officer that performed the same duties as a State Correctional Officer. However, this new classification was not added to the California Peace Officers Procedural Bill of Rights.

There are correctional officers, specifically in the newly created “Modified Community Correctional Facilities”, not included in the protections created in the Public Safety Officers Procedural Bill of Rights Act. These individuals have little to no procedural protections against disciplinary actions taken against them.

SB 368 would include officers at Modified Community Correctional Facilities in the Peace Officers Bill of Rights, granting them the procedural protections that other officers in the state are afforded.

2. Peace Officer Bill of Rights (POBOR)

POBOR provides peace officers with procedural protections relating to investigation and interrogations of peace officers, self-incrimination, privacy, polygraph exams, searches, personnel files, and administrative appeals. When the Legislature enacted POBOR in 1976 it found and declared “that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern.” The statute this bill seeks to amend was incorporated into POBOR in 1999.

The POBOR provided law enforcement officers with a variety of procedural protections. *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, explains that:

[T]he Act: (1) secures to public safety officers the right to engage in political activity, when off duty and out of uniform, and to seek election to or serve as a member of the governing board of a school district; (2) prescribes certain protections which must be afforded officers during interrogations which could lead to punitive action; (3) gives the right to review and respond in writing to adverse comments entered in an officer’s personnel file; (4) provides that officers may not be compelled to submit to polygraph examinations; (5) prohibits searches of officers’ personal storage spaces or lockers except under specified circumstances; (6) gives officers the right to administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit; and

(7) protects officers against retaliation for the exercise of any right conferred by the Act. [Citations omitted.]

In *County of Riverside v. Superior Court (Madrigal)* (2002) 27 Cal.4th 793, the California Supreme Court summarized the purpose of the Act:

[POBOR] declares “that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers.” Among other things, the Act guarantees public safety officers the right to view any adverse comment placed in their personnel files and to file, within 30 days, a written response, which will be attached to the adverse comment. These provisions reflect the public's interest in good relations between peace officers and their employers, including protecting peace officers from unfair attacks on their character. Peace officers, in particular, must confront the public in a way that may lead to unfair or wholly fabricated allegations of misconduct from disgruntled citizens. Law enforcement agencies must take these citizen complaints seriously but at the same time ensure fairness to their peace officer employees. The Bill of Rights Act therefore gives officers a chance to respond to allegations of wrongdoing. [*Id.* at 799, citations omitted.]

Furthermore, in his veto message of AB 2893 (Montanez), of the 2003-04 Legislative Session, Governor Schwarzenegger stated:

[POBOR] was intended to provide an additional layer of protection to peace officers due to the unique circumstances that they face while enforcing California's laws. Their job leads to a variety of public interactions and requires split-second decision making that could mean life or death for the officer or members of the community. While I recognize the vital service that coroners provide to the citizens of California, their job duties do not generally place them in situations that would necessitate the protections provided in this Act.

In addition, as public employees, coroners already have significant civil service protections. Mandating that they be covered by the Act would simply remove local decision making and increase State costs without providing a significant benefit to the public. [Governor's veto message to Assem. on Assem. Bill No. 2893 (Sept. 15, 2004) 6 Assem J. (2003-2004 Reg. Sess.) p. 8133.]

3. Scope of POBOR, Attempts at Expansion, and This Bill:

POBOR covers a wide variety of peace officers. The list of peace officers currently covered includes:

- 1) Police officers and deputy sheriffs. (Pen. Code, § 830.1.)
- 2) Specified deputy sheriffs that exclusively handle inmate custody. (Pen. Code, § 830.1.)
- 3) California Highway Patrol Officers (Pen. Code, § 830.2.)
- 4) Specified community college and school district police. (Pen. Code, § 830.32.)
- 5) BART Police, harbor or port police, transit police. (Pen. Code, § 830.33.)
- 6) Municipal utility district and county water district security officers. (Pen. Code, § 830.34.)
- 7) Welfare fraud or child support investigator or inspector, as specified (Pen. Code, § 830.35.)
- 8) Sergeant at Arms of each house of the Legislature. (Pen. Code, § 830.36.)
- 9) Members of an Arson Investigating Unit. (Pen. Code, § 830.37.)

- 10) Officers of a state hospital under the jurisdiction of the State Department of State Hospitals. (Pen. Code, § 830.38.)
- 11) Parole Officers, probation officers, and correctional officers for the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 830.5.)
- 12) Deputy sheriffs, in specified counties, employed to perform duties exclusively related to custodial assignments involving the custody, care, supervision, security, movement, and transportation of inmates are covered by POBOR. (Pen. Code, § 830.1, subd. (c), Gov. Code, § 3301.) Those deputy sheriffs have similar duties and responsibilities to the peace officers described in this bill.

When the original bill creating the Act - AB 301 - was introduced on December 19, 1974, it did include firefighters in its provisions. The firefighters were removed from the bill prior to the enactment of the Act (AB 1411 of 1999-2000 that was introduced to create an Act for firefighters but was not enacted).

POBOR has had very few expansions since its inception in 1974. SB 353 (Presley), Chapter 1165, Statutes of 1989 last successfully expanded the scope of POBOR to include the following:

- 1) Specified community college and school district police. (Pen. Code, § 830.32.)
- 2) BART Police, harbor or port police, transit police. (Pen. Code, § 830.33.)
- 3) Municipal utility district and county water district security officers. (Pen. Code, § 830.34.)
- 4) Welfare fraud or child support investigator or inspector, as specified (Pen. Code, § 830.35.)
- 5) Sergeant at Arms of each house of the Legislature. (Pen. Code, § 830.36.)
- 6) Members of an Arson Investigating Unit. (Pen. Code, § 830.37.)

Various bills have been proposed to add reserve peace officers to the Act but have not been enacted:

- 1) SB 522 (Chesbro), 2001, attempted to add city and county correctional officers to POBOR, failed passage in Senate Public Safety
- 2) AB 170 (La Suer), 2001, attempted to add reserve peace officers to POBOR, failed in Assembly Public Safety.
- 3) AB 2893 (Montanez), 2004, attempted to add coroners to POBOR, vetoed by the governor.
- 4) AB 398 (Fox), 2013, attempted to add coroners to POBOR, failed in Assembly Appropriations.
- 5) AB 2830 (Salas), 2016, attempted to add city and county correctional officers to POBOR, failed passage in Assembly Appropriations.
- 6) SB 655 (Galgiani), 2017, attempted to add coroners to POBOR, failed in Senate Appropriations.

The peace officers specified in this bill also have responsibilities that are purely custodial in nature. The individuals that they are responsible for supervising are specified adult and juvenile inmates of the state correctional system. These individuals are either adults under the authority of the California Department of Corrections and Rehabilitation or juveniles under the authority of the Division of Juvenile Justice. The state has contracted with certain cities and counties for those jurisdictions provide facilities for custodial supervision of the specified adult and juvenile inmates. Given the similarity to the responsibilities of deputy sheriffs in certain counties that are purely custodial officers, it would not be inconsistent to cover the custodial peace officers specified in this bill under POBOR.

4. Argument in Support

The Communication Workers of America, District 9 (CWA), representing 60,000 workers in California, is pleased to sponsor SB 368. Correctional officers at the Shafter and Taft modified community correctional facilities are represented by a CWA affiliate. This bill would correct an oversight and ensure that modified community correctional officers are given the same rights and protections as other correctional officers in California.

In 2012, as part of realignment, the State of California created modified community correctional facilities. The State contracted with local governments to house and provide services to individuals who would have otherwise been held in state prisons. As part of this new creation, the modified community correctional officer designation was also established. However, unlike other correctional officers, who bear the same responsibilities, this new category was not included in the Public Safety Officers Procedural Bill of Rights (POBR). As a result, these workers, many of whom are represented by CWA Local 9110, are operating without clear protocols for employee disputes with the local government. Many of these workers are forced to go directly to court to argue over the appropriate process. This bill would clarify that POBR applies in these situations, as it would if these officers were working in any other state affiliated facility with the same incarcerated population.

5. Argument in Opposition

According to the San Francisco Public Defender's Office:

Under the existing Public Safety Officers Procedural Bill of Rights Act, various protections and immunities are provided to public safety officers. Such protections apply to these officers' conduct in interrogations, investigation, and disciplinary actions. The Public Safety Officers Procedural Bill of Rights Act has a detrimental effect to the public because it shields officers who have committed misconduct, in turn extending the lack of accountability in future cases and police work.

SB 368 expands the Public Safety Officers Procedural Bill of Rights Act by including correctional officers who are employed by a city or county in facilities housing those incarcerated. Broadening the categories of government employees protected by the Public Safety Officers Procedural Bill of Rights Act would have severe implications in criminal cases involving those correctional officer employees because it would provide them additional safeguards where the misconduct has been committed.

Moreover, SB 368 would adversely impact the public's general awareness around its law enforcement procedures and ability to hold law enforcement responsible for their actions. Because the Public Safety Officers Procedural Bill of Rights Act provides additional protections for law enforcement where they should be held accountable during misconduct situations, it should be repealed, not expanded with SB 368.