
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 536 **Hearing Date:** January 14, 2020
Author: Umberg
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Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Public Safety Officers*

HISTORY

Source: Los Angeles County Professional Peace Officers Association

Prior Legislation: SB 699 (Galgiani), 2018, never referred from Senate Rules
SB 655 (Galgiani), 2017, failed passage in Senate Appropriations
AB 398 (Fox), 2013, failed passage in Assembly Appropriations
AB 2893 (Montanez), 2004, vetoed

Support: California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California Narcotics Officers Association; Riverside Sheriffs' Association

Opposition: California Public Defenders Association

PURPOSE

The purpose of this legislation to extend Peace Officer Bill of Rights ("POBOR") protections to coroners and deputy coroners in Los Angeles County, as specified.

Existing law specifies that coroners and deputy coroners, who are regularly employed and paid in that capacity, are peace officers whose authority extends to any place in the state for the purpose of performing their primary duties or when making an arrest, as specified. Authorizes these peace officers to carry firearms only if authorized and under terms and conditions specified by their employing agency. (Penal Code § 830.35.)

Existing law defines "public safety officer," for the purposes of POBOR, as numerous state and local peace officer classifications including, but not limited to, city police, deputy sheriffs, court marshals, district attorney investigators, the California Highway Patrol, university police, state regulatory investigators, park rangers, game wardens, housing authority police, community college and school district police, port and transit officers, public utility officers, and parole and state correctional officers. (Government Code § 3301.)

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

Existing law provides for specified procedures and safeguards when any public safety officer is under investigation and subject to interrogation by his or her commanding officer or any other member of the employing department that could lead to punitive action. Some of the procedures and safeguards required include: (Government Code § 3303.)

- 1) Conducting the interrogation at a reasonable hour, preferably at a time when the public safety officer is on duty or during the normal waking hours of the officer, unless the seriousness of the investigation requires otherwise, and requiring that the officer be compensated if the interrogation occurs during off-duty time of the officer;
- 2) Informing the public safety officer under investigation prior to the interrogation of the rank, name, and command of officer in charge of the interrogation, the interrogating officer, and all other people present during the interrogation;
- 3) Informing the public safety officer under investigation of the nature of the investigation before any interrogation;
- 4) Prohibiting the admissibility, with specified exceptions, in any subsequent civil proceeding any statement made during the interrogation by a public safety officer under duress, coercion, or threat of punitive action;
- 5) Providing the public safety officer with access to the tape if a tape recording is made of the interrogation; and
- 6) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, the officer who is being interrogated, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation.

Existing law provides that no public safety officer shall have his assigned locker or other storage space that is owned or leased by the employing agency searched except in his presence or with his consent or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. (Government Code §3309.)

Existing law provides that no public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under POBOR, or the exercise of any rights under any existing administrative grievance procedure but that this provision does not prevent a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination. (Government Code § 3304(a).)

Existing law provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal. (Government Code § 3304(b).)

Existing law provides that no police chief may be removed by a public agency, or appointing authority, without providing the police chief with written notice and the reason or reasons of the removal and an opportunity for administrative appeal. (Government Code § 3304(c).)

Existing law provides that, except as specified, no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances: (Government Code § 3304(d).)

- 1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period;
- 2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver;
- 3) If the investigation is a multi-jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies;
- 4) If the investigation involves more than one employee and requires a reasonable extension;
- 5) If the investigation involves an employee who is incapacitated or otherwise unavailable;
- 6) If the investigation involves a matter in civil litigation where the public safety officer is named as a defendant, the one-year time period shall be tolled while that civil action is pending;
- 7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution; or
- 8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

Existing law provides that where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by POBAR. (Government Code § 3304(e).)

Existing law provides that if, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline. (Government Code § 3304(f).)

Existing law provides that notwithstanding the one-year time period specified above, an investigation may be reopened against a public safety officer if both of the following circumstances exist: (Government Code § 3304(g).)

- 1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation; and
- 2) One of the following conditions exist:
 - a) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency; or
 - b) The evidence resulted from the public safety officer's predisciplinary response or procedure.

This bill adds coroners and deputy coroners in Los Angeles County to the list of public safety officers covered by POBOR.

COMMENTS

1. Need for This Bill

According to the author:

Currently, coroners and deputy coroners who are in a Sheriff/Coroner agency are under the aegis of the Peace Officer Bill of Rights. Those coroner and deputy coroners who are in a freestanding coroner or medical examiner office – even though they are also peace officers – are not under the Peace Officer Bill of Rights. This bill will bring those coroner and deputy coroners under POBOR just like their colleagues.

2. Coroners and Deputy Coroners

All 58 counties in California have a Sheriff's Department and the vast majority of those counties also provide for the Sheriff to assume the duties of the Coroner. (<http://www.counties.org/county-office/sheriff-coroner>.) The Sheriff is a constitutionally elected official. (*Id.*) The Coroner, in those counties where the Sheriff doesn't assume both roles, is responsible for inquiring into and determining the circumstance, manner, and cause of all violent, sudden, or unusual deaths. (*Id.*) Some counties have independently elected Coroners and others have appointed Coroners, or Medical Examiners who perform the duties of the Coroner. (*Id.*)

The Court of Appeal discussed the essential duties that deputy coroners are tasked to perform:

Deputy coroners conduct investigations into the causes of death, as opposed to investigating crimes. While most death scenes do not involve criminal conduct, some do, and in such cases, the coroner's investigation supports and parallels that of the appropriate law enforcement agency. A deputy coroner's duties include: receiving reports of death from physicians, law enforcement and hospital

personnel; initiating investigations at death scenes to determine if death is due to homicide, suicide, accident or nontraumatic causes; securing scientific and pathological evidence such as clothing, weapons, drugs, body fluids; fingerprinting and attempting to identify the decedent; locating and notifying relatives of the decedent; speaking with physicians about the decedent's medical history and checking other medical records to determine the cause of death; ordering autopsies or other services from skilled technicians to aid in arriving at an exact cause of death; testifying in court; and preparing and signing death certificates. A deputy coroner's determination about the cause of death may initiate a criminal investigation. (*Riverside Sheriffs' Association v. Board of Administration, California Public Employees' Retirement System* (2010) 184 Cal.App.4th 6-7.)

3. Peace Officer Bill of Rights: Effect of Legislation

The POBOR was enacted in 1976 and 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; (7) 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 (8) 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:

[POBAR] 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:

[POBAR] 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.]

The committee may wish to consider whether coroners and deputy coroners confront the public in a way that may lead to unfair or wholly fabricated allegations of misconduct from disgruntled citizens. Additionally, the committee should ask if their jobs require split-second decision making that could mean life or death for the officer or members of the community.

4. Argument in Support

According to the Los Angeles County Professional Peace Officers Association:

This bill cleans up a gap in current law. Currently, peace officer coroners and deputy coroners who are part of a county sheriff's agency are covered by POBOR. However, peace officer coroners who perform the precise same function, but are in a free-standing Coroner officer, are not covered by POBOR. Including these peace officer coroners and deputy coroners under the aegis of POBOR is not only sound public policy, it is a quantified minor change. Statewide, this change will only place approximately 100 or so additional peace officers under the rubric of POBOR.

Peace officer coroners and deputy coroners are responsible for planning and investigating into the circumstances of death at the scene; taking custody of any money, valuables, other items or documents; having responsibility for recognizing, collecting and preserving physical evidence, including gunshot residue, sexual assault evidence, ligatures, garrotes, drugs, narcotics and paraphernalia, and other trace evidence. They also interview witnesses and gather all information related to the circumstances and cause of death of the decedent. This requires coordination with representatives of other criminal justice agencies as circumstances dictate. Just as other peace officers, coroner and deputy coroners frequently testify in criminal cases with respect to the cause and circumstances of death.

5. Argument in Opposition

According to the California Public Defenders Association:

SB 536 seeks to add coroners and deputy coroners to the already long list of peace officers who are covered by a series of employment protections collectively known as “Public Safety Officers Procedural Bill of Rights Act.” These are special employment protections above and beyond that which is afforded by civil service protections. They include the right to be informed of nature of the allegation, restrictions on where and when an interrogation may take place among other unique protections afforded law enforcement officers who are suspected of wrongdoing and required to submit to questioning. Importantly such protections may sometimes work to undermine the truth-seeking process and curtail legitimate reform efforts from resulting.

There does not appear to be any legitimate purpose served in affording coroners and deputy coroners these protections. These individuals like other civil servants are already afforded civil service protections. Additionally, most counties in California are moving away from coroner systems and towards instituting medical examiners in their place. Thus, it is likely in the near future there will be very few remaining counties with a coroner in existence.

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