SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 2 (Bradford)
Version: March 11, 2021
Hearing Date: April 27, 2021
Fiscal: Yes
Urgency: No
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SUBJECT

Peace officers: certification: civil rights

DIGEST

This bill reforms the Tom Bane Civil Rights Act by articulating a new standard for establishing liability, eliminating the application of certain governmental immunities, and expanding standing to bring an action pursuant to the act for the wrongful death of an individual. The bill establishes new standards and mechanisms for evaluating, disqualifying, and decertifying law enforcement officers.

EXECUTIVE SUMMARY

The impetus for the bill is twofold. First, California is one of only a few states without a police decertification process. The bill addresses this by rethinking and reforming the standards for evaluating, disqualifying, and now decertifying law enforcement officers in California. Second, although the Tom Bane Civil Rights Act ("Bane Act") is one of California's most important civil rights laws, it has failed to address the civil rights violations it seeks to remedy and deter and has been severely narrowed by judicial interpretations that have created additional hurdles rather than a clear path to justice. The bill therefore reforms the Bane Act by eliminating the application of certain governmental immunities, lowering the threshold for establishing a civil rights claim, and narrowly expanding standing to bring such claims.[1]

As the author notes, this bill was originally introduced as SB 731 (Bradford, 2020), following the nationwide protests last year after the murder of George Floyd, amid calls for stronger police accountability and growing opposition to the concept of qualified immunity for law enforcement, wherein law enforcement, and other governmental actors, are shielded from liability even when found to have violated an individual's civil rights. The seeming lack of consequences in the steady stream of police misconduct and killings stoked a righteous anger and call to action. Melina Abdullah, a professor of Pan-African Studies and co-founder of the Los Angeles chapter of Black Lives Matter,

[1] For purposes of this Committee's analysis, the focus will be on the latter element.

captured the sentiment: "We can mourn, we can be in pain but we can also be enraged. We have a right to our rage."

The bill is co-sponsored by the Alliance for Boys and Men of Color, the ACLU of California, the Anti-Police-Terror Project, Black Lives Matter Los Angeles, California Families United 4 Justice, Communities United for Restorative Youth Justice, PolicyLink, the STOP Coalition, UDW/AFSCME Local 3930, and the Youth Justice Coalition. It is supported by a wide coalition of stakeholders. It is opposed by many law enforcement associations, including the California Police Chiefs Association and the California State Sheriffs' Association. This bill passed out of the Senate Public Safety Committee on a 4 to 0 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Provides, under the Tom Bane Civil Rights Act, that if a person or persons, whether or not acting under color of law, interfere, or attempt to interfere, by threat, intimidation, or coercion, with the exercise or enjoyment by any individual of any rights secured by the Constitution or laws of the United States, or by the Constitution or laws of the state of California, the Attorney General, or any district attorney or city attorney, is authorized to bring a civil action for injunctive and other equitable relief, as well as a civil penalty. (Civ. Code § 52.1(b).)

2) Authorizes an individual whose exercise or enjoyment of their rights has been interfered with, or attempted to be interfered with, to institute and prosecute in their own name and on their own behalf a civil action for damages, including, but not limited to, damages under Section 52 of the Civil Code, injunctive relief, reasonable attorney's fees and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct, as described. (Civ. Code § 52.1(c), (i).)

3) Provides that if a court issues a temporary restraining order or a preliminary or permanent injunction in Bane Act actions ordering a defendant to refrain from conduct or activities, the order issued shall indicate that a violation of it is a crime. (Civ. Code § 52.1(e), (j).)

4) Provides, pursuant to federal law, that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper

proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. (42 U.S.C. § 1983 ("Section 1983").)

5) Provides, under the Government Claims Act, that unless a statute provides otherwise, a public entity is not liable for injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. However, a public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of their employment if the act or omission would otherwise have given rise to a cause of action against that employee. (Gov. Code § 814 et seq.)

6) Provides that a public employee is not liable for injury caused by their instituting or prosecuting any judicial or administrative proceeding within the scope of their employment, even if the employee acts maliciously and without probable cause. (Gov. Code § 821.6.)

7) Provides that a public entity is not liable for an injury proximately caused by any prisoner or an injury to any prisoner. (Gov. Code § 844.6.)

8) Provides that neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in the employee's custody; but, except as otherwise provided, a public employee, and the public entity where the employee is acting within the scope of employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and the employee fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay. (Gov. Code § 845.6.)

9) Provides for the indemnification of public employees, as specified. It requires a public entity to pay a judgment or settlement of a claim or action to which it has agreed if an employee or former employee of a public entity requests the public entity to defend the employee against any claim or action against the employee for an injury arising out of an act or omission occurring within the scope of their employment as an employee of the public entity, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, except as provided. A public entity is only authorized to pay that part of a claim or judgment that is for punitive damages under certain circumstances. (Gov. Code §§ 825, 825.2.)

10) Provides the limited circumstances under which a public entity may recover from an employee the amounts paid for claims or judgments. (Gov. Code §§ 825.4, 825.6.)

11) Authorizes a cause of action for the death of a person caused by the wrongful act or neglect of another to be asserted by any of the following persons or by the decedent's personal representative on their behalf:

    a) the decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons who would be entitled to the property of the decedent by intestate succession, as specified;
    b) whether or not qualified above, if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, parents, or the legal guardians of the decedent if the parents are deceased. (Code Civ. Proc. § 377.60.)

This bill:

1) Provides that the threat, intimidation, or coercion required by the Bane Act need not be separate or independent from, and may be inherent in, any interference or attempted interference with a right.

2) Provides that a person bringing suit need not prove that a person being sued had specific intent to interfere or attempt to interfere with a right secured by the Constitution or law. Intentional conduct to interfere or attempt to interfere with a constitutional right or right granted by law or deliberate indifference or reckless disregard for such a right that interferes or attempts to interfere with that right, is sufficient to prove a violation of this section by threat, intimidation, or coercion. A person acts "intentionally" when the person acts with general intent or a conscious objective to engage in particular conduct.

3) Authorizes a cause of action under the Bane Act for the death of a person to be asserted by any person described in Section 377.60 of the Code of Civil Procedure.

4) Eliminates the application of the immunity provisions laid out in Sections 821.6, 844.6, and 845.6 of the Government Code to a Bane Act claim brought against any peace officer or custodial officer, or directly against a public entity that employs a peace officer or custodial officer.

5) Clarifies that the indemnification provisions laid out in Sections 825, 825.2, 825.4, and 825.6 of the Government Code continue to apply to Bane Act claims against current or former public employees.

6) Disqualifies a person from being employed as a peace officer based on specified conduct.

7) Requires the Commission on Peace Officer Standards and Training (POST) to adopt by regulation a definition of "serious misconduct" that shall serve as the criteria to be considered for ineligibility for, or revocation of, certification, including specified bases. The bill grants POST the power to investigate and determine the fitness of any person to serve as a peace officer in the state of California and to audit any law enforcement agency that employs peace officers without cause at any time.

8) Creates the Peace Officer Standards Accountability Division within POST to investigate and prosecute proceedings to take action against a peace officer's certification. The bill also creates the Peace Officer Standards Accountability Advisory Board to make recommendations on the decertification of peace officers to the commission. The bill provides processes and standards by which these entities oversee law enforcement officers and the evaluation and certification or decertification of those officers.

9) Requires certain reporting and record keeping by law enforcement and requires POST to produce an annual report, as specified.

10) Makes all records related to the revocation of a peace officer's certification public and requires that records of an investigation be retained for 30 years.

COMMENTS

1. The civil rights statutes and their shortcomings

Reflecting on a case in which a young Black man, Darren Burley, was killed by police, Justice Goodwin Liu recently opined on the failure of our civil rights laws to adequately address the civil rights violations we continue to see all too regularly. The preeminent civil rights laws under both federal and California law, Section 1983 and the Bane Act respectively, imposed too high of a barrier for the victim's family to assert claims in that case. In affirming a wrongful death judgment, the Justice stated:

> A wrongful death judgment with substantial damages is one way of affirming the worth and dignity of Darren Burley's life, and I join today's opinion. But the racial dimensions of this case should not escape our notice. How are we to ensure that "the promise of equal justice under law is, for all our people, a living truth"? (Cal. Supreme Ct., Statement on Equality and Inclusion (June 11, 2020) [https://newsroom.courts.ca.gov/news/supreme-court-california-issues-statement-equality-and-inclusion].) Whatever the answer, it must involve acknowledging that Darren Burley's death at the hands of law

> enforcement is not a singular incident unmoored from our racial history. With that acknowledgment must come a serious effort to rethink what racial discrimination is, how it manifests in law enforcement and the justice system, and how the law can provide effective safeguards and redress for our neighbors, friends, and citizens who continue to bear the cruel weight of racism's stubborn legacy.[2]

This bill attempts to provide those safeguards and redress by bolstering the effectiveness of the Bane Act.

a. *Section 1983*

Section 1983 provides a cause of action for redress against state and local officials who, "under color of any statute, ordinance, regulation, custom, or usage," deprive a person of any rights, privileges, or immunities secured by the Constitution and laws. This statute serves as the main vehicle for alleging violations of federal constitutional and statutory rights in this country.

In his concurring opinion in *B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, California Supreme Court Justice Goodwin Liu discussed the impetus for this federal civil rights law in the context of the case involving Darren Burley, discussed above. Justice Liu wrote:

> Section 1983 provides a cause of action against state and local officials who violate individual constitutional and statutory rights while acting "under color of" state law. (42 U.S.C. § 1983.) After the Civil War, the Ku Klux Klan continued to terrorize African Americans in the South. Beatings, lynchings, and destruction of Black-owned property were common, and local authorities and courts routinely refused to enforce state criminal laws against perpetrators and often participated in the violence themselves. Congress enacted section 1983 to "interpose the federal courts between the States and the people," providing African Americans redress when the very officials sworn to protect them from violence were its perpetrators.[3]

Despite the strong public policy goals underlying Section 1983, many have questioned its efficacy as a result of the doctrine of qualified immunity. The United States Supreme Court explains the defensive shield provided by this legal mechanism:

> The doctrine of qualified immunity shields officials from civil liability so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. A

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[2] *B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 35.
[3] *Id.* at 33. (citations and internal quotations marks omitted).

> clearly established right is one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right. We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate. Put simply, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.[4]

By the court's own estimation, the doctrine shields nearly all government actors from being found liable for violating the constitutional rights of individuals. The American Bar Association recently spotlighted the exploration of the state of policing in the country in its magazine, and one article, written by a policy analyst at the Cato Institute, pointedly addressed the concerns with qualified immunity:

> Unfortunately, most members of law enforcement operate today in a culture of near-zero accountability. Police officers rarely face meaningful consequences for their misconduct, and the public's accurate perception of this fact has contributed to what can best be described as a crisis of confidence in our nation's law enforcement.
>
> Accountability has therefore become a top priority for anyone interested in criminal justice reform.
>
> And while this culture of near-zero accountability has many causes, by far the most significant is qualified immunity. Qualified immunity is a judicial doctrine created by the Supreme Court that shields state actors from liability for their misconduct, even when they break the law. Under this doctrine, government agents—including but not limited to police officers—can never be sued for violating someone's civil rights, unless they violated "clearly established law." While this is an amorphous, malleable standard, it generally requires civil rights plaintiffs to show not just a clear legal rule, but a prior case with functionally identical facts.
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> In other words, it is entirely possible—and quite common—for courts to hold that government agents did violate someone's rights, but that the victim has no legal remedy, simply because that precise sort of misconduct had not occurred in past cases. In the words of Don Willett, a federal judge on the U.S. Court of Appeals for the Fifth Circuit: "To some observers, qualified immunity smacks of unqualified impunity, letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the first to behave badly."[5]

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[4] *Mullenix v. Luna* (2015) 577 U.S. 7, 11-12 (citations and internal quotations marks omitted).
[5] Jay Schweikert, *Qualified Immunity* (December 17, 2020) American Bar Association: Insights on Law and Society, https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-21/issue-1/qualified-immunity/.

The underlying case in *B.B.* asserted civil rights claims under both federal and state law based on an incident in which an officer pressed his knees on Burley's neck and back with the full weight of the officer's body as the man gasped for air, an incident all too familiar after the murder of George Floyd. The man lost consciousness, none of the officers rendered aid, and the man never regained consciousness and died 10 days later. Justice Liu highlighted the severe limitations of the law in this context:

> On several occasions, Congress has enacted civil rights statutes in response to law enforcement violence against African Americans. Although these laws, including section 1983, provide a measure of recognition that the police officer's knee on Darren Burley's neck is part of a legacy of anti-Black violence, their efficacy has been much debated. The Burley family's federal suit was dismissed because the statute of limitations had run but even if the suit had gone forward, the family would have needed to overcome a number of hurdles in order to obtain relief.
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> But the doctrine of qualified immunity shields officials from liability under section 1983 so long as their "conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." To show that a right was clearly established at the time of the conduct, a plaintiff must identify precedent governing "the specific facts at issue" that has "'placed the statutory or constitutional question beyond debate.'" Applying this standard, a federal appeals court has concluded that even if binding authority has held it is excessive force to unleash a police dog on a surrendering suspect in a canal in the woods, it is not necessarily clearly established that unleashing a police dog on a motionless suspect in a bushy ravine is excessive force. . . .
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> Another federal judge, in a powerful and extensive account of the racial history of section 1983 and the continuing lack of accountability for police harassment and violence against African Americans, has noted that qualified immunity in its present form is "extraordinary and unsustainable." Today there are numerous proposals to narrow or eliminate this judicially created limitation on section 1983 liability.[6]

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[6] *B.B. v. County of Los Angeles*, 10 Cal.5th at 30-34 (internal citations omitted). The opinion also notes that what happened to Darren Burley and George Floyd were not happenstance. "Variants of this fact pattern have occurred with distressing frequency throughout the country and here in California. (*See, e.g., People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1133 ['[Oscar] Grant protested, "I can't breathe. Just get off of me. I can't breathe. I quit. I surrender. I quit."']; *Garlick v. County of Kern* (E.D.Cal. 2016) 167 F.Supp.3d 1117, 1134 ['[David] Silva was chest-down with weight on his back. … [T]hroughout the altercation, Silva was … yelling out "help," and "help me."']; *Martinez v. City of Pittsburg* (N.D.Cal., Mar. 8, 2019, No. 17-cv-04246-RS) 2019 WL 1102375, p. *3 ['Once [Humberto] Martinez was secured, Elmore … continued to apply pressure to the side of Martinez's head and kept his knee on Martinez's upper back for approximately 30 seconds. … Eventually, one of the officers noticed that Martinez was turning purple, at which point they rolled him to his side and removed the handcuffs.']; *People v. O'Callaghan* (Mar. 13, 2017,

b. *The Bane Act*

The Bane Act provides a right of action against a person who interferes with the rights of an individual afforded by the United States and California constitutions, and other federal and state laws, whether or not the person was acting under color of law, a difference between it and Section 1983. An action can be brought by the Attorney General or any district attorney or city attorney in California for injunctive and other equitable relief, "in order to protect the peaceable exercise or enjoyment of the right or rights secured." The prosecuting entity may also seek a civil penalty of $25,000 to be assessed individually against each person violating this law. Such penalties are provided to the individuals whose rights are determined to have been violated.

The individual whose rights were violated is also authorized to bring an action on their own behalf for damages, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including "appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct." In many cases, Bane Act claims are asserted alongside Section 1983 claims when a person alleges their rights have been violated by a governmental actor.

The Bane Act states that the interference, or attempted interference, with an individual's rights must be by "threat, intimidation, or coercion." Similar to Section 1983, the courts have interpreted the Bane Act in such a way that injured plaintiffs have a high hurdle to clear in order to establish civil rights claims.

The California Supreme Court has found that the Bane Act "does not extend to all ordinary tort actions because its provisions are limited to threats, intimidation, or coercion that interferes with a constitutional or statutory right."[7] The original intent of the Bane Act was "to stem a tide of hate crimes against minorities in the 1980s," and the law "acknowledge[s] the racial dimensions of acts of violence against African Americans." [8] However, plaintiffs "need not allege that defendants acted with discriminatory animus or intent, so long as those acts were accompanied by the requisite threats, intimidation, or coercion."[9]

The appellate court in *Boccato v. City of Hermosa Beach* (1994) 29 Cal.App.4th 1797, 1809, found that "an action brought under Civil Code section 52.1 must allege that the plaintiff who claims interference of [their] rights also allege that this interference was due to [their] 'race, color, religion, ancestry, national origin, political affiliation, sex,

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B265928) 2017 WL 958396, p. *1 [nonpub. opn.] ['[Alesia] Thomas remarked, "I can't move" and "I can't breathe"' and [the] officer 'proceeded to kick Thomas three times in her lower abdomen']; *C.R. v. City of Antioch* (N.D.Cal., June 25, 2018, No. 16-cv-03742-JST) 2018 WL 3108982, p. *2 [witness 'testified that he heard [Rakeem] Rucks say at some point while he was on the ground, "Get me up out of the dirt. I'm breathing dirt. It's hard to breathe."'].)" (*Ibid.*)

[7] *Venegas v. County of Los Angeles* (2004) 32 Cal.4th 820, 843.

[8] *B.B. v. County of Los Angeles*, 10 Cal.5th at 32.

[9] *Venegas v. County of Los Angeles*, 32 Cal.4th at 843.

sexual orientation, age, disability, or position in a labor dispute." This forced the Legislature to pass legislation to correct this assumption.[10] However, the ability to establish a civil rights violation claim pursuant to the Bane Act was significantly impaired after several other appellate court decisions came down.

In *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, the court found that the "statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." The case involved a plaintiff who was unlawfully detained due to a clerical error. The court found that the statute did not provide relief for a constitutional violation "brought about by human error rather than intentional conduct."[11] After briefly exploring the legislative history of the statute, the court found it supported their "conclusion that the statute was intended to address only egregious interferences with constitutional rights, not just any tort."[12] In what would dramatically alter the standard applied to Bane Act claims by many courts, the court asserted two additional findings. First, that the "act of interference with a constitutional right must itself be deliberate or spiteful."[13] Second, it further held that "where coercion is inherent in the constitutional violation alleged . . . the statutory requirement of 'threats, intimidation, or coercion' is not met; the statute requires a showing of coercion independent from the coercion inherent in the wrongful detention itself."[14]

Several other cases have further heightened the bar for injured plaintiffs. In *Cornell v. City and County of San Francisco* (2017) 17 Cal.App.5th 766, 801, another appellate court found, in the context of an unlawful arrest, that "the egregiousness required by Section 52.1 is tested by whether the circumstances indicate the arresting officer had a specific intent to violate the arrestee's right." The holding distanced itself from a reading of *Shoyoye* that required the threat, intimidation, or coercion to be independent from the underlying civil rights violation in each instance:

> Nothing in the text of the statute requires that the offending "threat, intimidation or coercion" be "independent" from the constitutional violation alleged. Indeed, if the words of the statute are given their plain meaning, the required "threat, intimidation or coercion" can never be "independent" from the underlying violation or attempted violation of rights, because this element of fear-inducing conduct is simply the means of accomplishing the offending deed (the "interfere[nce]" or "attempted … interfere[nce]").[15]

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[10] AB 2719 (Wesson, Ch. 98, Stats. 2000).
[11] *Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 959.
[12] *Id.* at 958-59.
[13] *Ibid.*
[14] *Ibid.*
[15] *Cornell v. City and County of San Francisco*, 17 Cal.App.5th at 800.

The *Cornell* court instead found the better approach was "to focus directly on the level of scienter required," and set out the applicable two-part test involving the specific intent standard:

> The first is a purely legal determination. Is the . . . right at issue clearly delineated and plainly applicable under the circumstances of the case? If the trial judge concludes that it is, then the jury must make the second, factual, determination. Did the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that . . . right? If both requirements are met, even if the defendant did not in fact recognize the [unlawfulness] of his act, he will be adjudged as a matter of law to have **acted [with the requisite specific intent]—i.e., in reckless disregard** of constitutional [or statutory] prohibitions or guarantees.[16]

In *Reese v. County of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1043, the Ninth Circuit Court of Appeals adopted the interpretation laid out in *Cornell* that the Bane Act requires proof of specific intent to violate the plaintiff's rights. The federal court differentiated the "objectively reasonable" standard applicable to federal Fourth Amendment excessive force claims to the specific intent required pursuant to Bane Act claims, but made it clear that in establishing specific intent "it is not necessary for the defendants to have been thinking in constitutional *or legal terms* at the time of the incidents, because a reckless disregard for a person's constitutional rights is evidence of a specific intent to deprive that person of those rights."[17] The Ninth Circuit court also indicated it would thereafter be guided by *Cornell's* restricted reading of *Shoyoye*, limiting its application to Bane Act claims involving "mere negligence."[18]

Many courts have echoed the concern that a clear understanding of the elements of a Bane Act claim has been elusive. The California Supreme Court has asserted that "applying the coercion element of a Bane Act claim has not been straightforward."[19] Federal courts have also found that the "Bane Act's requirement that interference with rights must be accomplished by threats intimidation or coercion 'has been the source of much debate and confusion.' Courts have struggled with how to apply these broad terms in a coherent fashion." [20] "Courts deciding whether the 'threat, intimidation or coercion' must be distinct from the alleged underlying constitutional or statutory violation have come out all over the map."[21]

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[16] *Id.* at 799, 803 (internal quotations and citations omitted; emphasis added).
[17] *Reese v. Cty. of Sacramento* (9th Cir. 2018) 888 F.3d 1030, 1045 (internal quotations and citations omitted; emphasis in original).
[18] *Id.* at 1044, fn. 5.
[19] *B.B. v. County of Los Angeles*, 10 Cal.5th at 32.
[20] *McKibben v. McMahon* (C.D.Cal. Apr. 17, 2015, No. EDCV 14-02171 JGB (SPx)) 2015 U.S.Dist.LEXIS 176696, at *7-8 (citing *Sanchez v. City of Fresno*, 2013 U.S. Dist. LEXIS 68561, 2013 WL 2100560, at *11 (E.D. Cal. May 14, 2013).
[21] *K.T. v. Pittsburg Unified Sch. Dist.* (N.D.Cal. 2016) 219 F. Supp. 3d 970, 982.

Two additional cases are also relevant to the changes made by this bill. In *Bay Area Rapid Transit Dist. v. Superior Court* (1995) 38 Cal.App.4th 141, the parents of Jerrold Hall asserted a cause of action pursuant to the Bane Act for the wrongful death of their son after a BART police officer, Richard Crabtree, allegedly struck the teenager twice with a shotgun, and when Jerrold turned and walked away, Crabtree shot him in the back of the head, killing him. The court found that plaintiffs could not assert the claim because the "Bane Act is simply not a wrongful death provision. It clearly provides for a personal cause of action for the victim of a hate crime." Although the latter holding relied on *Boccato* and was therefore overturned, the ruling forecloses wrongful death claims under the Bane Act.

Another appellate court opinion in *Towery v. State of California* (2017) 14 Cal.App.5th 226, 233, found that the Bane Act "does not override statutory immunities" and therefore Bane Act claims are subject to the various statutory immunities that protect governmental defendants from liability even when they are found to have committed civil rights violations.

Although there is a split among courts on some of these interpretations of the Bane Act, there is no doubt the case law has created a high bar for plaintiffs and confusion for all parties and the courts.

2. Reforming the Bane Act

This bill reforms the Bane Act acknowledging the impact that case law has had on the ability of Californians to assert their rights under the act. While the California Legislature cannot change the court-created qualified immunity doctrine applicable to Section 1983 claims, it can make the Bane Act a more effective and powerful tool to combat civil rights violations and make accountability a more pressing priority. The bill works to remove the barriers erected for Bane Act plaintiffs by the cases discussed above.

First, the bill directly addresses the additional requirement imposed by the court in *Shoyoye* by adding the following provision to the Bane Act: "The threat, intimidation, or coercion required under this section need not be separate or independent from, and may be inherent in, any interference or attempted interference with a right."

Second, the bill partially abrogates the holdings in *Cornell* and *Reese* by inserting the following into the Bane Act: "A person bringing suit under this section need not prove that a person being sued under this section had specific intent to interfere or attempt to interfere with a right secured by the Constitution or law." This makes clear that *specific* intent is not required to establish a violation of the Bane Act. Obviously, despite these changes, a plaintiff is still required to prove the defendant violated the plaintiff's civil rights.

This section of the bill continues:

> For any person, public entity, or private entity sued under this section, intentional conduct to interfere or attempt to interfere with a constitutional right or right granted by law or deliberate indifference or reckless disregard for a constitutional right or right granted by law that interferes or attempts to interfere with that right, is sufficient to prove a violation of this section by threat, intimidation, or coercion. For purposes of this section, a person acts "intentionally" when the person acts with general intent or a conscious objective to engage in particular conduct.

While it appears this language is intended to replace the existing specific intent standard with a general intent standard, the full purpose and operation of this language is not totally clear. The author may wish to clarify this portion of the bill given its import to the question of what is the proper standard to apply for Bane Act claims rather than leave any ambiguities for the courts to have to address.

Next, the bill addresses the holding in *Bay Area Rapid Transit Dist. v. Superior Court*, 38 Cal.App.4th 141, where the court rejected the parents' wrongful death claim under the Bane Act, finding the act "is limited to plaintiffs who themselves have been the subject of violence or threats." The bill provides that a cause of action under the Bane Act *can* be asserted by those asserting claims pursuant to Section 377.60 of the Code of Civil Procedure, California's wrongful death statute.

Finally, the bill states that the immunity provisions in Government Code sections 821.6, 844.6, and 845.6 do not apply to Bane Act claims brought against any peace officer or custodial officer, or directly against a public entity that employs such officers, partially abrogating the holding in *Towery*. Section 821.6 provides that: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Section 845.6 immunizes both public entities and public employees for failure to furnish medical care to a prisoner in their custody. The remaining statute, Section 844.6, provides immunity solely to a public entity for injuries to prisoners or injuries proximately caused by prisoners.

Writing in support, the Consumer Attorneys of California explain the need for the immunities revision:

> Governmental immunity statutes generally should not apply to civil rights violations. However, an unfortunate case set the precedent that state immunities apply to the Bane Act, contrary to the legislative intent of the act. From its inception, the Bane Act's purpose has been to specifically target unlawful conduct motivated by discriminatory animus that interferes with the victim's enjoyment of statutory or constitutional civil rights. The statutory language fulfills that purpose by providing remedies

> for certain misconduct that interferes with "any right secured by the Constitution or laws of the United States, or of this state."

In order to address some confusion about who is encompassed by the term "custodial officers" in this provision, the author has agreed to include a cross-reference to the Penal Code, defining the term.

3. Other states also making changes

California is not alone in pushing for changes to police accountability measures. Earlier this month, Maryland's state legislature overturned their Governor's veto to pass a package of reforms known as the Maryland Police Accountability Act. "The legislation will overhaul the disciplinary process for officers accused of misconduct, allow public scrutiny of complaints and internal affairs files, and create a new legal standard requiring that police use only 'necessary' and 'proportional' force."[22] In addition, officers who intentionally use excessive force resulting in serious physical injury or death are subject to increased criminal penalties, including up to 10 years in prison.[23] The statutes will also limit so-called "no-knock" warrants and the ability of police to raid homes at night. These issues were at the heart of Breonna Taylor's death, where officers entered her home in the middle of the night while she lay in bed and killed her.

Also in April, New Mexico passed and Governor Michelle Lujan Grisham signed the New Mexico Civil Rights Act. The law provides:

> A person who claims to have suffered a deprivation of any rights, privileges or immunities pursuant to the bill of rights of the constitution of New Mexico due to acts or omissions of a public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body may maintain an action to establish liability and recover actual damages and equitable or injunctive relief.[24]

The claims are to be brought against the public entity itself, and the law prohibits the "defense of qualified immunity."[25]

4. Indemnification and liability

One persistent criticism from opponents to this bill and proponents of qualified immunities in both federal and California law is that law enforcement officers will be personally subject to crushing monetary liabilities, which will deter them from acting

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[22] Bryn Stole & Pamela Wood, *Maryland legislators pass landmark police reform package into law, overriding Gov. Hogan's vetoes* (April 10, 2021) Baltimore Sun, https://www.baltimoresun.com/politics/bs-md-pol-saturday-session-20210410-eyfrbxrlevhrvohrm43lbntvyq-story.html; MD S.B. 71 (2021).
[23] MD S.B. 71 (2021).
[24] 2021 N.M. Ch. 119.
[25] *Ibid.*

and from joining departments in the first place. However, even for those cases that are able to make it over the many hurdles discussed above, there is no solid evidence that law enforcement officers are actually paying the costs for their own civil rights violations. This is due in large part to the indemnification practices that insulate officers from this liability.

In fact, a national study of indemnification practices was conducted by Professor Joanna Schwartz, drawing information from a variety of sources in 44 of the largest law enforcement agencies across the country, and in 37 smaller agencies.[26] The evidence revealed that "governments paid approximately 99.98% of the dollars that plaintiffs recovered in lawsuits alleging civil rights violations by law enforcement." Strikingly, the study found **zero** examples of law enforcement officers satisfying a punitive damages award against them and "almost never contributed anything to settlements or judgments—even when indemnification was prohibited by law or policy, and even when officers were disciplined, terminated, or prosecuted for their conduct." The study found:

> Between 2006 and 2011, in forty-four of the country's largest jurisdictions, officers financially contributed to settlements and judgments in just .41% of the approximately 9225 civil rights damages actions resolved in plaintiffs' favor, and their contributions amounted to just .02% of the over $730 million spent by cities, counties, and states in these cases. Officers did not pay a dime of the over $3.9 million awarded in punitive damages. And officers in the thirty-seven small and mid-sized jurisdictions in my study never contributed to settlements or judgments in lawsuits brought against them. Governments satisfied settlements and judgments in police misconduct cases even when indemnification was prohibited by statute or policy. And governments satisfied settlements and judgments in full even when officers were disciplined or terminated by the department or criminally prosecuted for their conduct.
>
> My findings of widespread indemnification undermine assumptions of financial responsibility relied upon in civil rights doctrine. Although the Court's stringent qualified immunity standard rests in part on the concern that individual officers will be overdeterred by the threat of financial liability, actual practice suggests that these officers have nothing reasonably to fear, at least where payouts are concerned. Although the Court's municipal liability doctrine rests on the notion that there should not be respondeat superior liability for constitutional claims, blanket indemnification practices are functionally indistinguishable from respondeat superior. And although the Court's prohibition of punitive damages against municipalities is rooted in a sense that imposition of

[26] Joanna C. Schwartz, *Police Indemnification* (2014) 89 NYU L.Rev. 885, available at https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-89-3-Schwartz.pdf.

> punitive damages awards on taxpayers would be unjust, my study reveals that taxpayers almost always satisfy both compensatory and punitive damages awards entered against their sworn servants.

The bill clarifies that Sections 825, 825.2, 825.4, and 825.6 of the Government Code continue to apply to Bane Act claims. These sections provide for the indemnification of culpable public employees by public entities. It should be noted that while many jurisdictions prohibit indemnification of punitive damages awards, California allows a public entity to pay that part of the judgment where it finds, among other elements, that it is "in the best interests of the public entity." Public entities themselves are immune from punitive or exemplary damages awards.[27] This evidence and the operation of the indemnification laws in California undermines the argument that stronger civil rights law will lead to settlement and judgments awards coming out of the pockets of officers themselves.

When developing the many facets of the law regulating government misconduct, it is crucial to ensure that the statutory scheme is properly calibrated to encourage or discourage certain behaviors. Given that most officers who violate the civil rights of the people they are sworn to protect will likely never pay a dime for their misconduct and the fact that large law enforcement agencies often have massive funds set aside already to pay out these settlements and judgments, or simply have the money come out of the jurisdiction's general fund, more focus is needed on ensuring that the law is geared towards effectively deterring misconduct of government actors and incentivizing proactive training and oversight over policing in particular. Ultimately, the goal is "to craft doctrines that effectively balance 'the importance of a damages remedy to protect the rights of citizens' and 'the need to protect officials who are required to exercise their discretion and the related public interest in encouraging the vigorous exercise of official authority.'"[28]

Furthermore, the California Supreme Court has called into question the assumption that "damages are enough to reliably deter police misconduct," pointing to the fact that "[l]ocal jurisdictions must indemnify officers for any nonpunitive damages judgments or settlements in suits brought against them (with few exceptions), which effectively means that taxpayers foot the bill" and that "these payouts often come from law enforcement budgets specifically set aside for such purposes or from the local

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[27] Gov. Code § 818.

[28] Joanna C. Schwartz, *Police Indemnification* (2014) 89 NYU L.Rev. 885, quoting *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 807. *See also*, Richard H. Fallon, Jr., *Asking the Right Questions About Officer Immunity*, 80 Fordham L.Rev. 479, 496 (2011), discussing the author's "Equilibration Thesis," in which "substantive rights, causes of action to enforce rights, rules of pleading and proof, and immunity doctrines all are flexible and potentially adjustable components of a package of rights and enforcement mechanisms that should be viewed, and assessed for desirability, as a whole."

jurisdiction's general funds."[29] "As a result, officers and their departments are often insulated from the financial consequences of their actions."[30]

The other portions of this bill certainly attempt to build these additional mechanisms by including the types of abuses underlying many Bane Act claims in the definition of "serious misconduct" that serves as the criteria for officers to be considered for ineligibility for, or revocation of, certification. In conjunction with appropriately calibrated civil actions and indemnification schemes, a more robust certification and decertification process provides a holistic approach to properly protecting the civil rights of all Californians.

5. Support for the bill

According to the author:

> For years, there have been numerous stories of bad-acting officers committing misconduct and not facing any serious consequences. These officers remain on the force after pleading down to a lesser crime, if prosecuted and convicted at all. Other times, these problematic officers resign or are fired from their employer only to get rehired at another law enforcement agency and continue to commit serious acts of misconduct. California does not have a uniform, statewide mechanism to hold law enforcement officers accountable. Allowing the police to police themselves has proven to be dangerous and leads to added distrust between communities of color and law enforcement. Furthermore, the Bane Act has been under assault and its original intent undermined. Federal courts have made the doctrine of qualified immunity a more potent obstacle to achieving justice for violations of rights under the federal civil rights law. Revisions are needed to address and clarify a number of recent negative court decisions that brought the Bane Act further out of alignment with its counterpart in federal law. Given the federal issue of qualified immunity, the Bane Act must be a strong resource to defend California civil rights. SB 2 creates a fair and impartial statewide process with due process safeguards to revoke a law enforcement officer's certification for a criminal conviction and certain acts of serious misconduct without regard to conviction. Additionally, the bill will correct misinterpretations and incongruences to full civil rights enforcement using the Bane Act and bringing it into alignment with federal law. Law enforcement officers are entrusted with great powers to carry a firearm, stop and search, use force, and arrest; to balance this, they must be held to a higher standard of accountability.

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[29] *B.B.*, 10 Cal. 5th at 32, citing Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform* (2016) 63 UCLA L.Rev. 1144.
[30] *Ibid.*

Black Lives Matter – California argues in support that "the bill strengthens the Tom Bane Civil Rights Act (Bane Act) to correct misinterpretations and impediments to full civil rights enforcement under state law. Accountability for law enforcement has been a priority for Black Lives Matter since our inception."

Writing in support, the Ella Baker Center for Human Rights states:

> [T]his bill seeks to address and clarify court decisions that have made meaningful remedy for civil rights violations under the Bane Act essentially useless. The Bane Act is California's most broadly applicable and essential civil rights law. Bane Act claims are included whenever constitutional or other rights are violated by government or private actors, most commonly from law enforcement's use of excessive force or false arrest.
>
> The California remedy for civil rights violations has increased in importance in all civil rights cases, including use of force cases under the previous Trump Administration. Federal courts have made the doctrine of qualified immunity an increasingly potent obstacle to achieving justice for violations of rights under federal civil rights law. Importantly, qualified immunity does not apply to state law claims, including violations of the Bane Act. Given that federal law is slow to make meaningful change, it is imperative that the state act now to strengthen the ability of Californians who have their rights violated and impacted families to seek justice for loved ones killed by law enforcement officers.

The California Immigrant Policy Center writes in support:

> The voices from the community are clear: the status quo must change, and the state must hold law enforcement officers accountable for the harm and terror inflicted on communities of color. SB 2 creates a fair and impartial statewide mechanism to hold law enforcement officers accountable and further protects the civil rights of Californians.

Giffords also writes in support, stating the bill "would help improve justice and public safety by authorizing people to seek justice in our civil courts when they suffer violations of civil rights by law enforcement." It asserts that this is "a gun violence prevention issue, both because police violence and abuse results in the death of about 1,000 Americans every year and because oppressive and unaccountable police conduct also fuels the broader root causes of violence."

6. Opposition to the bill

The California Police Chiefs Association writes in opposition:

> SB 2 makes significant changes to existing law regarding civil liability for cities and individual peace officers. Existing law, the Tom [Bane] Civil Rights Act, authorizes a cause of action against a person, whether or not acting under color of law, uses threats, intimidation or coercion to interfere with constitutionally protected rights. SB 2 expressly lowers the burden of proof under the Bane Act from "intentional" to mere "reckless disregard." "Reckless disregard" is defined as "giving little or no thought to the effects of their conduct" (CACI Jury Inst. 1603). Given that officers are often required to make split-second decisions under tense and rapidly evolving circumstances, one can see how easy it would be to prove this lowered standard. If an individual officer is found to have violated the Bane Act under this low threshold, the individual officer will now be personally subject to a $25,000 fine on top of any damages awarded. Financial impacts to cities will also likely be incredibly significant, given this new standard.
>
> SB 2 also takes away limited state immunity in several areas, including immunity from necessary prosecutions that will unduly expose officers to additional financial penalties. Creating enhanced civil liability is not a solution to removing bad officers, nor will it necessitate the type of cultural change in policing we all support. Making it easier to sue officers and cities will, however, exacerbate many of the other issues we are facing, including further reducing the number of qualified candidates entering the profession. If we create state statutes that make it so simple to punish officers for reacting to life and death situations, who would want to become an officer?

The Association for Los Angeles Deputy Sheriffs writes in opposition:

> SB 2 also amends California's Bane Act, which [is] the longstanding Section of law that protects public employees from frivolous lawsuits in civil actions. To be clear, the Bane Act does not currently provide unfettered "qualified immunity" to public employees who knowingly break the law or intend to violate civil or Constitutional rights; but the proposed amendments would equate to establishing a "strict liability" on the ***lawful and reasonable*** actions of individual peace officers attempting to carry out their professional duties in the course and scope of their employment.

Writing in opposition, the California State Sheriffs' Association explains:

> We are concerned that the language removing employee immunity from state civil liability will result in individual peace officers hesitating or failing to act out of fear that actions they believe to be lawful may result in litigation and damages. In so doing, SB 2 will very likely jeopardize public safety and diminish our ability to recruit, hire, and retain qualified individuals who would otherwise be drawn to public service.

Some in opposition have argued that the changes made by the bill will "expose all cities, special districts, joint powers authorities, counties and the state to unlimited liability and legal costs even for cases with little to no merit."
A coalition of law enforcement associations, including the Association of Orange County Deputy Sheriffs and the San Bernardino County Sheriff's Employees' Benefit Association expresses their opposition to the bill: "Nothing about this bill is equitable or fair."

SUPPORT

Alliance for Boys and Men of Color (co-sponsor)
ACLU of California (co-sponsor)
Anti-Police-Terror Project (co-sponsor)
Black Lives Matter Los Angeles (co-sponsor)
California Families United 4 Justice (co-sponsor)
Communities United for Restorative Youth Justice (co-sponsor)
PolicyLink (co-sponsor)
STOP Coalition (co-sponsor)
UDW/AFSCME Local 3930 (co-sponsor)
Youth Justice Coalition (co-sponsor)
AFSCME Local 3299
Against Bigotry, Responding with Action
American Association of Independent Music
American Federation of Musicians
Artist Rights Alliance
Asian Prisoner Support Committee
Asian Solidarity Collective
Bend the Arc: Jewish Action
Black Music Action Coalition
Brotherhood Crusade
California Alliance for Youth and Community Justice
California Faculty Association
California for Safety and Justice
California Immigrant Policy Center
California Innocence Coalition
California Innocence Project

California Nurses Association
California Public Defenders Association
Change for Justice
Children's Defense Fund - CA
Clergy and Laity United for Economic Justice
Community Advocates for Just and Moral Governance
Consumer Attorneys of California
Courage California
Democratic Party of the San Fernando Valley
East Bay for Everyone
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Equal Rights Advocates
Essie Justice Group
Everytown for Gun Safety
Fresno Barrios Unidos
Friends Committee on Legislation of California
Giffords
Indivisible CA: StateStrong
Indivisible East Bay
Indivisible South Bay LA
Indivisible Yolo
Initiate Justice
Justice Reinvestment Coalition of Alameda County
Kern County Participatory Defense
Ricardo Lara, California Insurance Commissioner
Law Enforcement Accountability Network
Law Enforcement Action Partnership
League of Women Voters of California
Legal Services for Prisoners with Children
Los Angeles LGBT Center
Loyola Project for the Innocent
Martin Luther King Jr. Freedom Center
Mexican American Bar Association of Los Angeles County
Mid-City Community Advocacy Network
Moms Demand Action for Gun Sense in America
Music Artists Coalition
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
NextGen California
Northern California Innocence Project
Northridge Indivisible
OC Emergency Response Coalition
Organizers in Solidarity
Pacifica Social Justice

People's Budget Orange County
PICO California
Pillars of the Community
Prosecutors Alliance of California
Public Health Institute
Recording Industry Association of America
Roots of Change
Salesforce.com
San Diegans for Justice
San Francisco Board of Supervisors
San Francisco Public Defender
San Jose State University Human Rights Institute
Santa Monica Coalition for Police Reform
Libby Schaaf, Mayor, City of Oakland
Screen Actors Guild – American Federation of Television and Radio Artists
Showing Up for Racial Justice Long Beach
Showing Up for Racial Justice San Diego
Showing Up for Racial Justice North County
Smart Justice California
Songwriters of North America
Southeast Asia Resource Action Center
Students Demand Action for Gun Sense in America
Team Justice
Think Dignity
Tides Advocacy
Together We Will/Indivisible - Los Gatos
We the People - San Diego
White People 4 Black Lives
Yalla Indivisible

OPPOSITION

Association for Los Angeles Deputy Sheriffs
Association of Orange County Deputy Sheriffs
Association of Probation Supervisors of Los Angeles County
California Association of Highway Patrolmen
California Association of Joint Powers Authorities
California Coalition of School Safety Professionals
California Correctional Peace Officers Association
California Fraternal Order of Police
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Corona Police Officers Association

Deputy Sheriffs Association of San Diego
Hawthorne Police Officers Association
Long Beach Police Officers Association
Los Angeles County Probation Managers Association AFSCME Local 1967
Los Angeles Police Protective League
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association
San Diego District Attorney Investigator's Association
San Diego Police Officers Association
San Francisco Police Officers Association
Santa Ana Police Officers Association

RELATED LEGISLATION

Pending Legislation:

AB 17 (Cooper, 2021) establishes the Peace Officer Standards Accountability Board, which would provide recommendations to the Commission on Peace Officer Standards and Training relating to officer retention; expand the authority of the Commission on Peace Officer Standards and Training; and add standards relating to the certification of officers and officer retirement/resignation. This bill is in the Assembly Public Safety Committee.

AB 26 (Holden, 2021) disqualifies from becoming an officer any person that has been found by a law enforcement agency that employs them to have either used excessive force that resulted in great bodily injury or the death of a member of the public or to have failed to intercede in that incident. It provides for the discipline of an officer that fails to intercede when witnessing excessive force. This bill is in the Assembly Appropriations Committee.

AB 60 (Salas, 2021) adds criteria disqualifying individuals from serving as a peace officer; establishes the Peace Officer Standards Accountability Board, which would provide recommendations to the Commission on Peace Officer Standards and Training relating to officer retention; expands the authority of the Commission on Peace Officer Standards and Training; and adds standards relating to the certification of officers and officer retirement/resignation. This bill is in the Assembly Public Safety Committee.

AB 718 (Cunningham, 2021) requires investigations into allegations that a law enforcement officer engaged in certain conduct, such as discharging a firearm or using force that resulted in death or great bodily injury, be completed regardless of whether

the officer voluntarily separates from the agency before the investigation is completed. This bill is in the Assembly Committee on Public Safety.

AB 958 (Gipson, 2021) restricts participation in law enforcement "cliques" and requires law enforcement agencies to institute policies banning law enforcement cliques. Law enforcement cliques are defined as a group of peace officers within a law enforcement agency that engage in a pattern of rogue on-duty behavior that violates the law or fundamental principles of professional policing. This bill is in the Assembly Committee on Public Safety.

Prior Legislation:

SB 731 (Bradford, 2020) would have established the Peace Officer Standards Accountability Board, which would develop and carry out procedures for revoking a law enforcement officer's certification under specified circumstances; added criteria prohibiting an individual from serving as a law enforcement officer; and added circumstances in which police officer records are subject to public disclosure. SB 731 was not brought up for a vote in the full Assembly.

AB 1022 (Holden, 2020) would have disqualified a person from being a peace officer if they have been found by a law enforcement agency that employs them to have either used excessive force that resulted in great bodily injury or death or to have failed to intercede in that incident as required by a law enforcement agency's policies. It died in the Senate Appropriations Committee.

AB 1506 (McCarty, Ch. 326, Stats. 2020) creates a division within the Department of Justice to conduct an independent investigation of any officer-involved shooting or other use of force that resulted in the death of a civilian if requested by a law enforcement agency.

AB 2719 (Wesson, Ch. 98, Stats. 2000) *See* Comment 1.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 4, Noes 0)
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