
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2735 **Hearing Date:** May 31, 2022
Author: Gray
Version: February 18, 2022
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Peace officers: deputy sheriffs*

HISTORY

Source: Merced County Sheriff Vern Warnke

Prior Legislation: AB 779 (Bigelow), Ch. 558, Stats. of 2021
AB 524 (Bigelow, 2019), vetoed by the Governor
AB 1872 (Gray), not heard in Senate Banking
SB 1254 (La Malfa), Ch. 66, Stats. of 2012
SB 490 (Maldonado), Ch. 52, Stats of 2009
AB 2215 (Berryhill), Ch. 15, Stats. of 2008
AB 151 (Berryhill), Ch. 84, Stats. of 2007
AB 272 (Matthews), Ch. 127, Stats. of 2005
AB 1931 (La Malfa), Ch. 516, Stats. of 2004
AB 1254 (La Malfa), Ch. 70, Stats. of 2003
AB 2346 (Dickerson), Ch. 185, Stats. of 2002
SB 926 (Battin), Ch. 68, Stats. of 2001
SB 1762 (Alpert), Ch. 61, Stats. of 2000
AB 574 (Villaraigosa), Ch. 950, Stats. of 1996

Support: California State Sheriffs Association; Merced County Law Enforcement Sergeants Association; Merced County Law Enforcement Chiefs Association; Teamsters Local Union No. 856

Opposition: None known

Assembly Floor Vote: 68 - 0

PURPOSE

The purpose of this bill is to add the county of Merced to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially related to custodial assignments are peace officers whose authority extends to any place in the state while engaged in the performance of duties related to their employment.

Existing law provides that any deputy sheriff of the Counties of Los Angeles, Butte, Calaveras, Colusa, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Mariposa, Mendocino, Plumas, Riverside, San Benito, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba

who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in California only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to custodial assignments or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. (Pen. Code, § 830.1(c).)

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

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

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

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

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

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

- Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce;
- Search property, cells, prisoners, or visitors;
- Conduct strip or body cavity searches of prisoners as specified;
- Conduct searches and seizures pursuant to a duly issued warrant;
- Segregate prisoners; and,
- Classify prisoners for the purpose of housing or participation in supervised activities. (Pen. Code, § 831.5(g)-(i).)

Existing law provides that Penal Code §831.5 does not authorize a custodial officer to carry or possess a firearm when the officer is not on duty. (Pen. Code, §831.5(j).)

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

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

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

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

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

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

This bill adds Merced County to the list of specified counties within which deputy sheriffs assigned to perform duties exclusively or initially relating to specified custodial assignments are peace officers whose authority extends to any place in California while engaged in the performance of the duties of their employment.

COMMENTS

1. Need for This Bill

According to the Author:

The Merced County Sheriff's Office and local police departments continue to have difficulty filling deputy sheriff and police officer vacancies. More than 30 other counties have already been added to Penal Code Section 830.1(c) which authorizes the county to utilize its correctional officers as peace officers under certain circumstances. The flexibility authorized under Penal Code Section 830.1(c) would assist Merced County to relieve significant local law enforcement staffing shortages, by making deputy sheriffs employed by the county of Merced assigned to perform custodial duties peace officers while engaged in the performance of the duties of their employment. Designating Merced County Correctional Officers as peace officers under Penal Code 830.1(c) will help Merced County maximize its existing law enforcement resources and join more than 30 other counties in California that currently have this status.

2. Effect of Designating Custodial Deputy Sheriffs as Peace Officers

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

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

According to the Author and the Merced County Law Enforcement Chiefs Association, which writes in support of the measure, designating custodial officers as peace officers would result in the following staffing benefits to the county:

- Correctional staff could be deployed to positions requiring peace officer powers during a local state of emergency. In past emergencies, correctional officers were unable to assist in the field.

- Correctional staff could detain and potentially arrest offenders who are engaging in criminal behavior outside the perimeter of jail facilities.
- Correctional staff could lawfully arrest individuals who come to a jail facility and surrender themselves on an outstanding warrant.
- Correctional staff could be assigned to criminal courtrooms as bailiffs allowing deputies to be utilized for patrol duties.

Limitation on the Scope of Authority Granted Under This Bill

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

3. Governor’s Veto of Similar Language and Subsequent Legislation

In 2019, Assemblymember Bigelow authored legislation (AB 524, 2019) similar to this bill, which would have added the counties of Del Norte, Madera, Mono and San Mateo to the list of counties in Penal Code §830.1 subdivision (c). That measure made it to the Governor’s desk with zero “no” votes, but was vetoed by Governor Newsom, who wrote in his veto message:

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

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

In 2021, Assemblymember Bigelow once again introduced this language (AB 779, Ch. 588, Stats. of 2021), which was later signed by the Governor, adding the counties of Del Norte, Madera, Mono and San Mateo to the list contained in Penal Code §830.1(c). Thus, it appears that the Governor no longer has concerns about a piecemeal approach to adding counties to that list.

4. Prior Expansions

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

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

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

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

AB 1931 (La Malfa), Chapter 516, Statutes of 2004, extended the same status and protections to deputy sheriffs in Butte County.

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

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

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

SB 490 (Maldonado), Chapter 52, Statutes of 2009, extended the same status and protections to deputy sheriffs in San Luis Obispo.

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

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

AB 779 (Bigelow), Chapter 558, Statutes of 2021 (discussed above), provided peace officer status to deputy sheriffs employed as custodial officers in the counties of Del Norte, Mono, Madera and San Mateo.

5. Argument in Support

According to the California State Sheriffs Association:

Existing law, Penal Code Section 830.1(c), provides that any deputy sheriff in 36 specified counties who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in

the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state of emergency. AB 2735 adds the County of Merced to PC 830.1(c) to give them more flexibility to address their custodial supervision needs.

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