
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 750 **Hearing Date:** July 6, 2021
Author: Jones-Sawyer
Version: April 12, 2021
Urgency: No **Fiscal:** Yes
Consultant: KW

Subject: *Crimes: perjury*

HISTORY

Source: Orange County District Attorney's Office

Prior Legislation: AB 2655 (Gipson), Ch. 219, Stats. 2020
SB 1421 (Skinner), Ch. 998, Stats. 2018

Support: American Civil Liberties Union (ACLU) – California Action; California District Attorneys Association (CDAA); Los Angeles District Attorney's Office; National Association of Social Workers – California Chapter

Opposition: None known

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to clarify the crime of a peace officer making a false report against another person, when the officer knows the statement is false, and is presenting the statement to be true.

Existing law establishes any person who has taken an oath that they will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which they know to be false, is guilty of perjury. (Pen. Code, § 118, subd. (a).)

Existing law states no person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence. (Pen. Code, § 118, subd. (b).)

Existing law provides every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise

expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This section shall not apply to the contents of any statement which the peace officer attributes in the report to any other person. (Pen. Code, § 118.1.)

Existing law establishes every person who reports to any peace officer the Attorney General, or a deputy attorney general, or a district attorney, or a deputy district attorney that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor. (Pen. Code, § 148.5, subd. (a).)

Existing law establishes every person who reports to any other peace officer that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor if:

- 1) The false information is given while the peace officer is engaged in the performance of his or her duties as a peace officer and;
- 2) The person providing the false information knows or should have known that the person receiving the information is a peace officer. (Pen. Code, § 148.5, subd. (b).)

This bill would make it a crime for a peace officer to make a false statement to another officer and have that statement included in a peace officer report.

This bill expands the crime of a peace officer making a false report to include any material statement made in a peace officer report or to another peace officer, regarding a criminal investigation, knowing the statement to be false.

This bill permits an exemption from this rule for writing or making a police report that includes the statements of another person that are false, unless the peace officer knows that statement to be false and is including the statement to present it as being true.

COMMENTS

1. Need for This Bill

According to the author:

Under current state law, any peace officer who files a report with a false statement is guilty of filing a false police report. However, this current law is limited to the officer who knowingly makes and files a false report themselves, and does not include officers who make a false statement to the officer writing and filing the report. Thus, an officer who makes a false statement to the report-writing officer is not held responsible for their falsified statement, while the report-writing officer is not held responsible because the law does not apply to statements made by other officers.

For example, when Officer A tells their partner Officer B to write in their report that “the suspect hit Officer A”, when said suspect did not hit the officer. If Officer B did not see whether or not Officer A was hit and simply writes what their partner said in the report, Officer A would escape punishment simply by having another officer write the police report. Officer A will not be held responsible because they did not write and file the report, nor could they be charged with aiding and abetting the false report.

This is because Officer B committed no crime under existing law, as it specifically states that it does not apply to statements made by other persons.

In 2020, the Orange County District Attorney's Office (OCDA) conducted a review of 31 cases against deputy sheriffs involving systemic problems with report-writing and evidence-booking in the Orange County Sheriff's Department (OCSD). During their investigation, OCDA found that one of the deputies made a material false statement; however, a second peace officer – the OCSD investigator who was assigned to determine the facts behind the evidence booking – wrote and filed the report containing the false statement. Given the current statute, the deputy making the false statement could not be prosecuted since they were not the report writer who made and filed the report which included the false statement.

Within their review, OCDA also found there were instances in which the officer who wrote and filed the report, which stated the evidence had been booked, was not written or filed by the same peace officer who either booked or was supposed to book the evidence. OCDA also found there were instances where officers would write in their reports that they booked the evidence when it was other deputies who had actually done, or were supposed to have done, so.

After conducting its criminal investigation and submitting its findings to OCDA for review, criminal charges were filed against deputy sheriffs on the basis of filing a false police report. However, the current law for prosecution under false police reporting could not hold the officers responsible, as those making the falsified statements were not the report writers. Closing this existing loophole to include peace officers who make false statements to report-writers will ensure officers will no longer be able to circumvent accountability for their falsified statements in police reports.

2. Police Perjury

If the lying occurred to frame an innocent person, it was clearly corrupt. If instead it was meant to facilitate conviction of a person the police witnesses thought to be guilty, it was also reprehensible. Although, as we shall see, many police and even some attorneys and judges seem to think otherwise, lying to convict a guilty person is wrong for several reasons. It is wrong because it involves lying under oath to judicial officers and jurors. It is wrong because it keeps from those fact finders information relevant to constitutional and other issues. And it is wrong because the police cannot be counted upon to get guilt right.

Perhaps most importantly, police lying intended to convict someone, whether thought to be guilty or innocent, is wrong because once it is discovered, it diminishes one of our most crucial "social goods"-trust in government.

First, of course, the exposure of police perjury damages the credibility of police testimony.

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Police perjury can cause other systemic damage as well. Presumably, for instance, the loss of police credibility on the stand diminishes law enforcement's effectiveness in the streets. Most significantly, to the extent other actors, such as prosecutors and judges, are perceived to be ignoring or condoning police perjury,⁹ the loss of public trust may extend beyond law enforcement to the criminal justice system generally.

Although both lying to convict the innocent and lying to convict the guilty thus deserve condemnation, this article will focus on the latter because it is the more resistant to change and the more prevalent (two traits that are not unrelated). Lying to convict the innocent is undoubtedly rejected by most police, as well as by others, as immoral and unjustifiable. In contrast, lying intended to convict the guilty-in particular, lying to evade the consequences of the exclusionary rule -is so common and so accepted in some jurisdictions that the police themselves have come up with a name for it: "testilying."

(Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 University of Colorado Law Review. 1037 (1996))¹

3. Argument in Support

According to the California District Attorneys Association:

There has never been a more important time to try and restore public trust and confidence in law enforcement and in the criminal justice system. Currently, there is ambiguity in Penal Code § 118.1 that prevents peace officers from being held accountable for making false statements in reports under certain situations. This legislation makes clear that a peace officer who knowingly and intentionally makes, or causes to be made, a material false statement regarding the commission of a crime violates the law. Specifically, AB 750 closes a loophole that allows a peace officer to escape accountability simply by attributing a knowingly false statement to another person.

-- END --

¹ <https://scholarship.law.vanderbilt.edu/faculty-publications/279/>