



# Capitol to Communities: Legislative Impact

**2020 Laws** |



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# QUESTIONS THIS CLASS WILL [ATTEMPT] TO ANSWER:

- 1) Are there any crimes left in California?
- 2) Do I need to call or visit CalPERS to see how close I am to retirement?
- 3) How is the housing market in Nevada and Arizona these days?
- 4) If vegetarians eat only veggies, what do humanitarians do?



# Presentations & Booklet (for download)

[www.cpoa.org/ctclu](http://www.cpoa.org/ctclu)

## What is CPOA?

A professional organization since 1921, the California Peace Officers' Association (CPOA) is an association dedicated to the leadership development of California's law enforcement personnel.

CPOA develops your leadership skills through low-cost and high-value educational courses on a variety of topics, advocates on your behalf at the State Capitol on the biggest-impact legislation and provides opportunities to make sustainable connections and grow your career at our *ADVANCE*, *CWFleet* and *Legislative Summit* events.

## How many members do we have?

CPOA **more than 36,000 members**, both from Department Memberships and Individual members.

**Who can be a CPOA member?** Membership is open to sworn and professional public safety personnel from all ranks and agencies within California.

**How is CPOA structured?** Our membership is comprised of 12 geographic Regions, with each Region having its own board of volunteer members who drive CPOA activity at the local level.



# AGENDA



Criminal justice trends, RIPA, 2020 laws, Use of Force



Fourth and Fifth Amendment cases, DUI testimony



# **CRIMINAL & LEGISLATIVE TRENDS**

# HOW THE HELL DID WE GET HERE?

## CA CRIMINAL JUSTICE REFORM Timeline

### AB 109 (realignment)

-Certain felons were relocated from prison to county jails.

### AB 953 (RIPA)

-Collection of vehicle and pedestrian stop demographic data

### AB 392

-Use of force reform to “reasonably necessary” standard.

2014

2016

2011

2015

2019

### Prop 47

-Reduced several property crimes from felonies and wobblers to misdemeanors.

-Forgery had to reach a \$950 threshold to be a felony

-Property under \$950 in value would now be considered ‘petty theft.’

### Prop 57

-Reduced sentences for certain “non-violent” offenders

### Prop 64

-Legalized recreational use of cannabis

# RIPA

<i>Reporting Wave</i>	<i>Size of Agency</i>	<i>Data Collection Begins</i>	<i>Data Must be Reported to DOJ</i>	<i>Approx. # of Agencies</i>
1	1,000+	July 1, 2018	April 1, 2019	8
2	667-999	Jan. 1, 2019	April 1, 2020	7
3	334-666	Jan. 1, 2021	April 1, 2022	10
4	1-333	Jan. 1, 2022	April 1, 2023	400+

## *Information Regarding Stop*

1. Date, Time, and Duration
2. Location
3. Reason for Stop
4. Was Stop in Response to Call for Service?
5. Actions Taken During Stop
6. Contraband or Evidence Discovered
7. Property Seized
8. Result of Stop

## *Information Regarding Officer's Perception of Person Stopped*

1. Perceived Race or Ethnicity
2. Perceived Age
3. Perceived Gender
4. Perceived to be LGBT
5. Limited or No English Fluency
6. Perceived or Known Disability

## *Information Regarding Officer*

1. Officer's Identification Number
2. Years of Experience
3. Type of Assignment

<i>Agency</i>	<i>Type of Data Submission</i>
California Highway Patrol	Web Services
Los Angeles Police Department	Secure File Transfer Protocol
Los Angeles County Sheriff's Department	Web Services
Riverside County Sheriff's Department	Secure File Transfer Protocol*
San Bernardino County Sheriff's Department	Web Services*
San Diego Police Department	Web Services*
San Diego County Sheriff's Department	Web Services*
San Francisco Police Department	Department-hosted Web Application

*\*These agencies are using a locally installed copy of an application developed by the San Diego County Sheriff's Departments.*

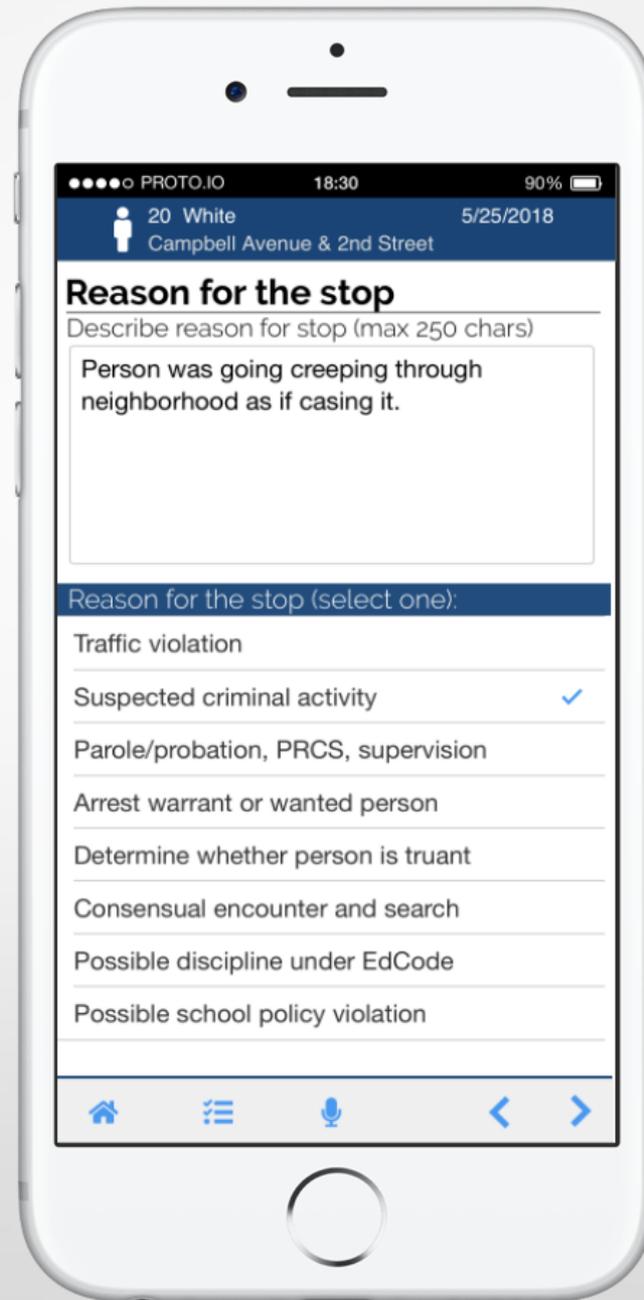
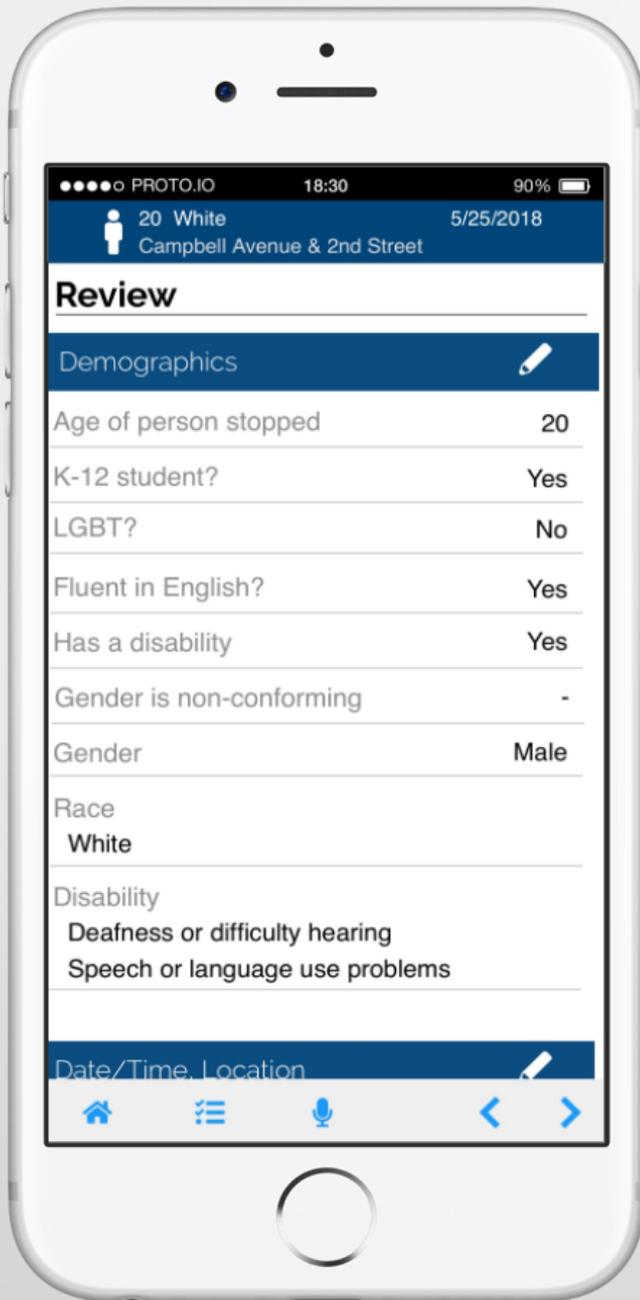
# Agency completion/submission policies:

**CHP-** Supervisors review record to ensure it complies with law/policy, including confirmation that open text fields do not contain personally identifiable information (PII) or unique identifying information (UII) of any person. Supervisors cannot edit record, but if needed, will return to officer to correct and re-submit.

**LAPD-** Once record is placed in supervisory queue, it is locked (i.e officer can't access). Supervisor can only edit open text fields (for PII and/or UII and grammatical errors). Approved records are flagged to be exported.

**LASD-** Deputy completes report and submits. Supervisors review, paying attention to text fields. For any required changes, including grammar, supervisor sends back to deputy for correction. Once approved, report is submitted. Agency's Data Systems Bureau conducts random audits and reviews of collected data.

**SDPD-** Once data is submitted internally, it is maintained in secured file. Supervisor does directly review, and officer cannot make changes once data is submitted to secured file. Officers must verify (via daily journals and reports) that they have submitted stop data. Supervisor inspects unit history files and approves reports to ensure compliance.





RACIAL &  
IDENTITY  
PROFILING  
ADVISORY  
BOARD

ANNUAL  
REPORT  
**20**  
**19**

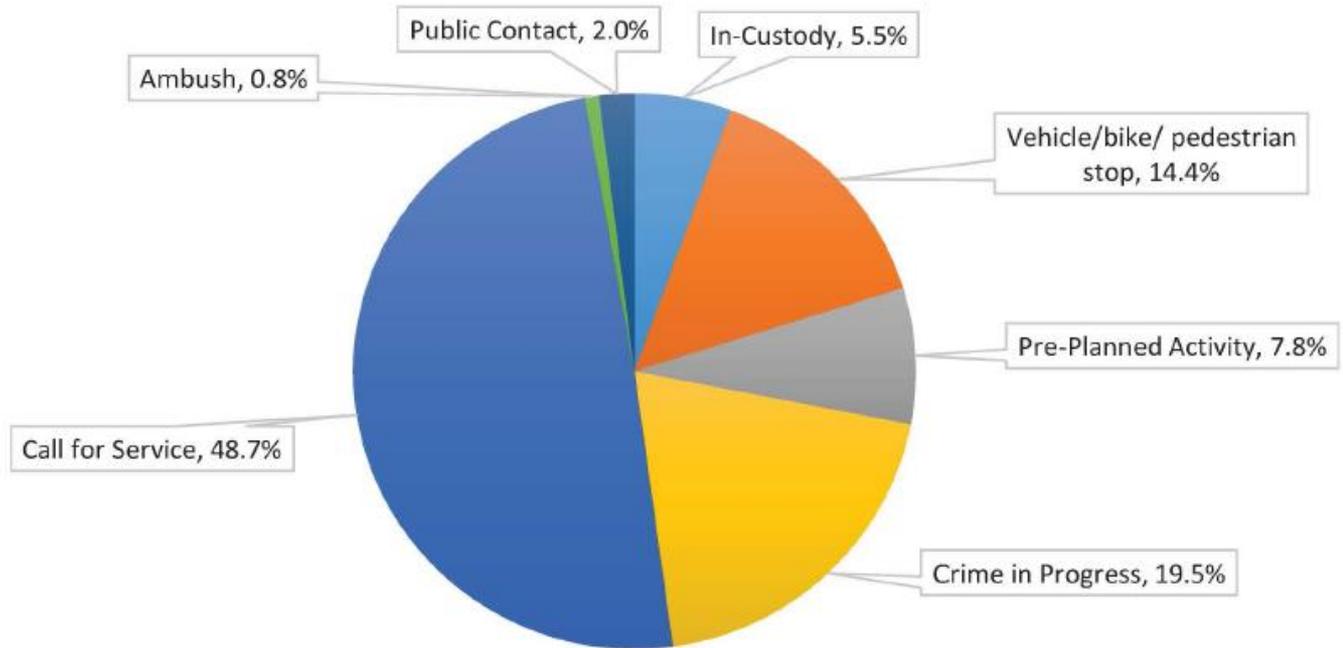
### ***Civilian Complaints for Stop Data Reporters Statewide***

The 453 agencies subject to RIPA reported 9,459 civilian complaints in 2017. The most common complaints alleged conduct that was noncriminal in nature ( $n = 8,682, 91.8\%$ )<sup>100</sup>, followed by complaints for conduct that constitutes a misdemeanor offense ( $n = 513, 8.4\%$ ); felony complaints were the least common ( $n = 264, 2.8\%$ ). Of the complaints that reached a disposition in the 2017 calendar year, 807 (10.2%) were sustained, 1,701 (21.4%) were not sustained, 1,897 (23.9%) were exonerated, and 3,537 (44.5%) were determined to be unfounded. As was noted in the above, not all complaints reach a disposition during the same year in which they were first reported. Therefore, it is likely that some of the complaints that reached disposition in 2017 were originally lodged in 2016 or years prior.

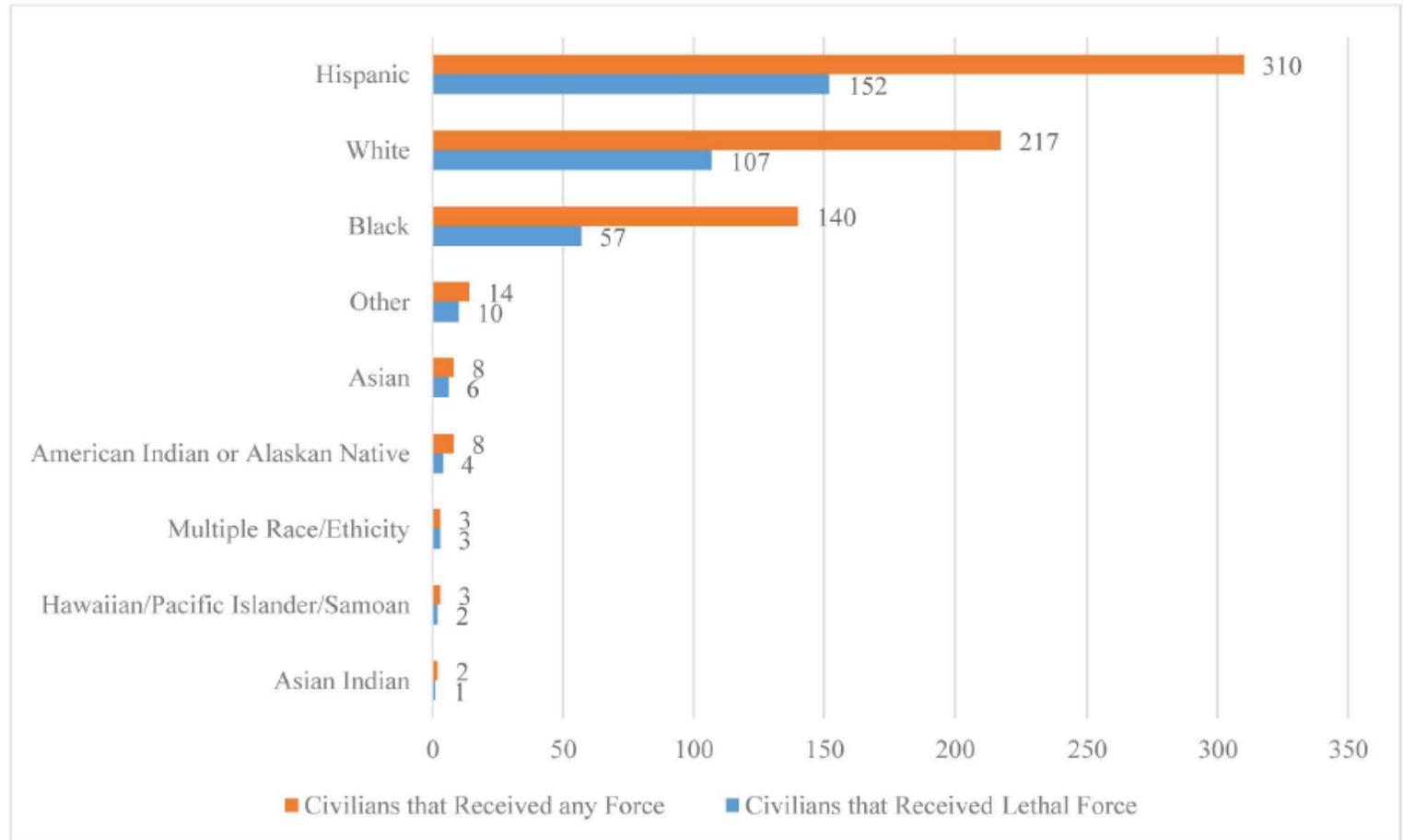
Seventy-nine (17.4%) agencies indicated they did not have any civilian complaints to report during the year of 2017. By contrast, 374 agencies did report that they received one or more civilian complaints. Of those 374 agencies that reported civilian complaints, 141 agencies reported one or more civilian complaints alleging racial or identity profiling. Specifically, those 141 agencies received 865 complaints alleging racial or identity profiling.

Of the racial and identity complaints that reached a disposition in 2017, 10 (1.5%) were sustained, 77 (11.7%) were not sustained, 96 (14.6%) were exonerated, and 476 (72.2%) were determined to be unfounded.

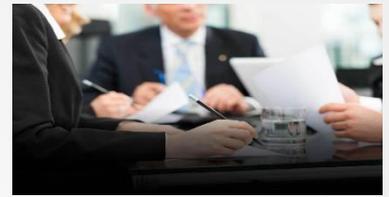
**Figure 4: Reason for Initial Contact**



**Figure 5: Civilians Receiving Lethal Force and All Force Types by Civilian Race or Ethnicity**



## Litigation Pointers from DOJ:



RIPA requirements could likely be used by defense attorneys in the litigation of suppression proceedings and 402 hearings on excluding defendants' statements.

1. In many counties, line DA's are not familiar with RIPA. It would be helpful if officers could start making DA's aware of the new reporting requirements and when your agency will be phased in.
2. The reason you want to make sure your DAs know how RIPA operates is that you do not want to be questioned in court about either irrelevant or possibly misleading matters.
3. Most importantly: the terminology used for RIPA reporting is **completely disconnected** from Search and Seizure law, the Fourth Amendment, the Fifth Amendment, and other federal constitutional provisions.
4. For example, RIPA has its own self-contained definitions for a "stop" and "custody." It also operates on reporting an officer's perceptions of race and identity rather than on verifiable facts.
5. Officers should turn to their chain of command for training/clarity on RIPA reporting requirements. Departmental inquiries on compliance or other issues should be directed to agency counsel, either the city attorney or county counsel.



# CRIME

IN CALIFORNIA

2018

Xavier Becerra, Attorney General  
California Department of Justice  
California Justice Information Services Division  
Bureau of Criminal Identification and  
Investigative Services  
Criminal Justice Statistics Center

Highlights for 2018:

### **Crime Rates per 100,000 Population**

- The violent crime rate decreased 1.5 percent from 2017 to 2018, while the property crime rate decreased 5.1 percent. (Table 2)

### **Arrest Rates per 100,000 Population at Risk**

- The 2018 total arrest rate of 3,527.5 is 1.1 percent lower than the 2017 total arrest rate of 3,565.2. (Table 17)

- From 2017 to 2018, the adult total arrest rate decreased 0.1 percent, while the juvenile total arrest rate decreased 17.9 percent. (Table 17)

## Civilians' Complaints Against Peace Officers

- The total number of reported civilians' complaints against peace officers decreased from 16,841 in 2017 to 16,525 in 2018. (Table 46)
- The total number of reported criminal complaints fell to 890, its lowest since 1987. (Table 46)

## Law Enforcement Officers Killed or Assaulted

- The total number of law enforcement officers assaulted in the line of duty increased from 10,770 in 2017 to 11,148 in 2018. (Table 49)
- In 2018, seven officers lost their lives in the line of duty, 4 feloniously and 3 accidentally. (Table 49)
- From 2017 to 2018, the number of law enforcement officers assaulted with a firearm decreased 34.3 percent, while the number assaulted with personal weapons (hands, fists, or feet) increased 7.1 percent. (Table 50)

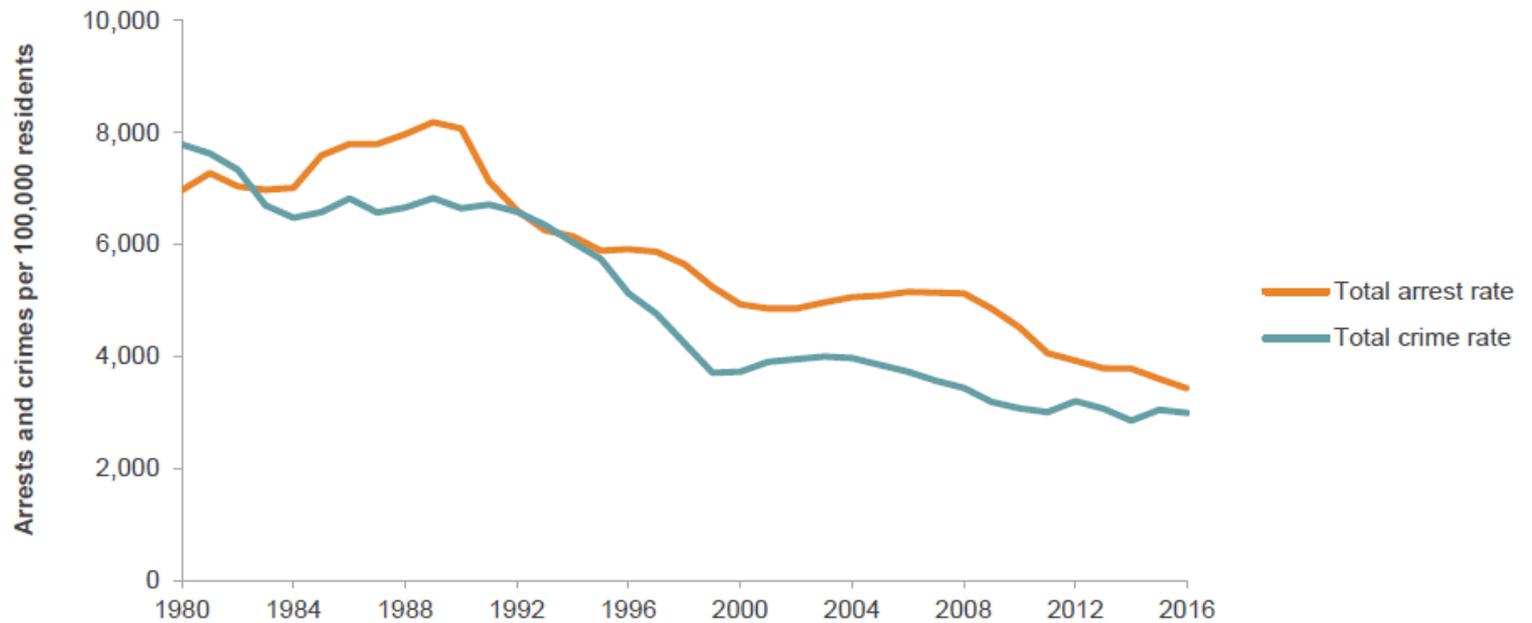


PPIC

PUBLIC POLICY  
INSTITUTE OF CALIFORNIA

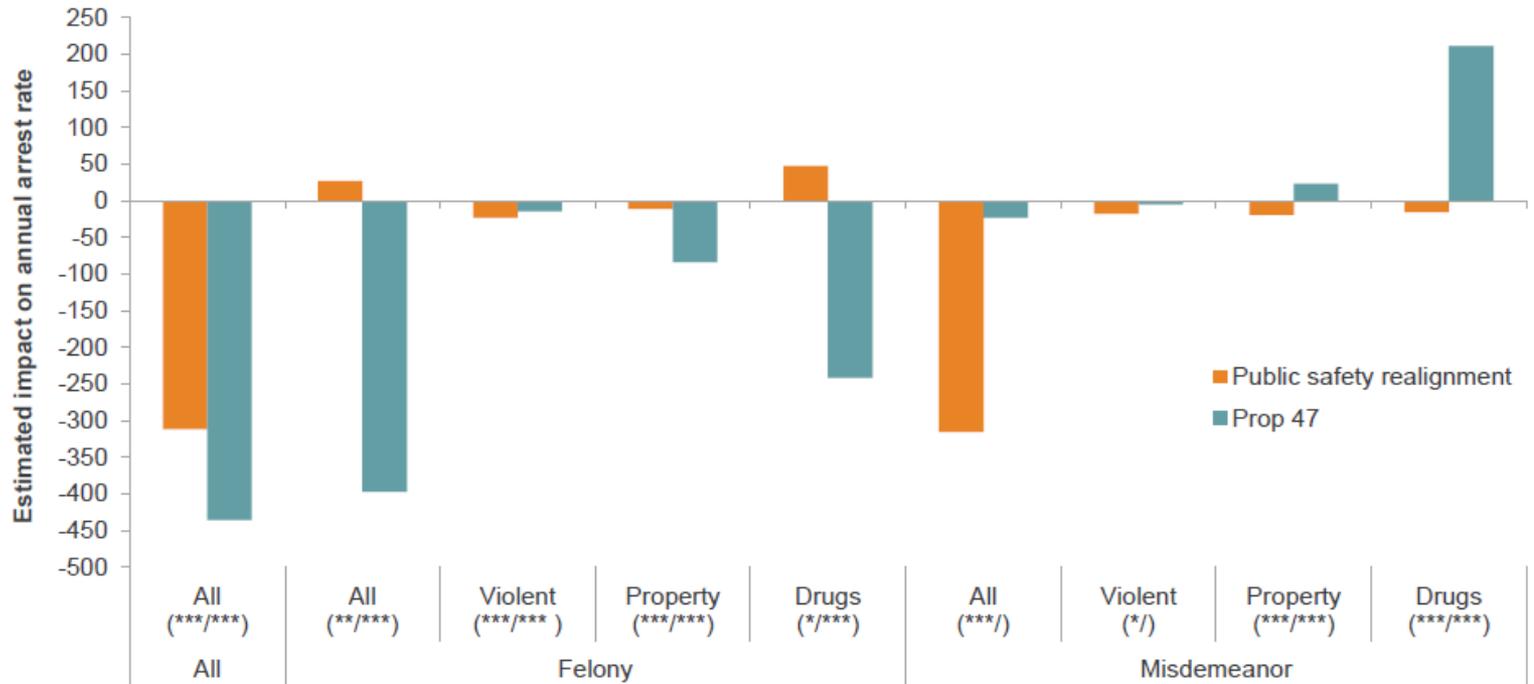
FIGURE 1

California's statewide arrest rates mirror crime rates to a large extent



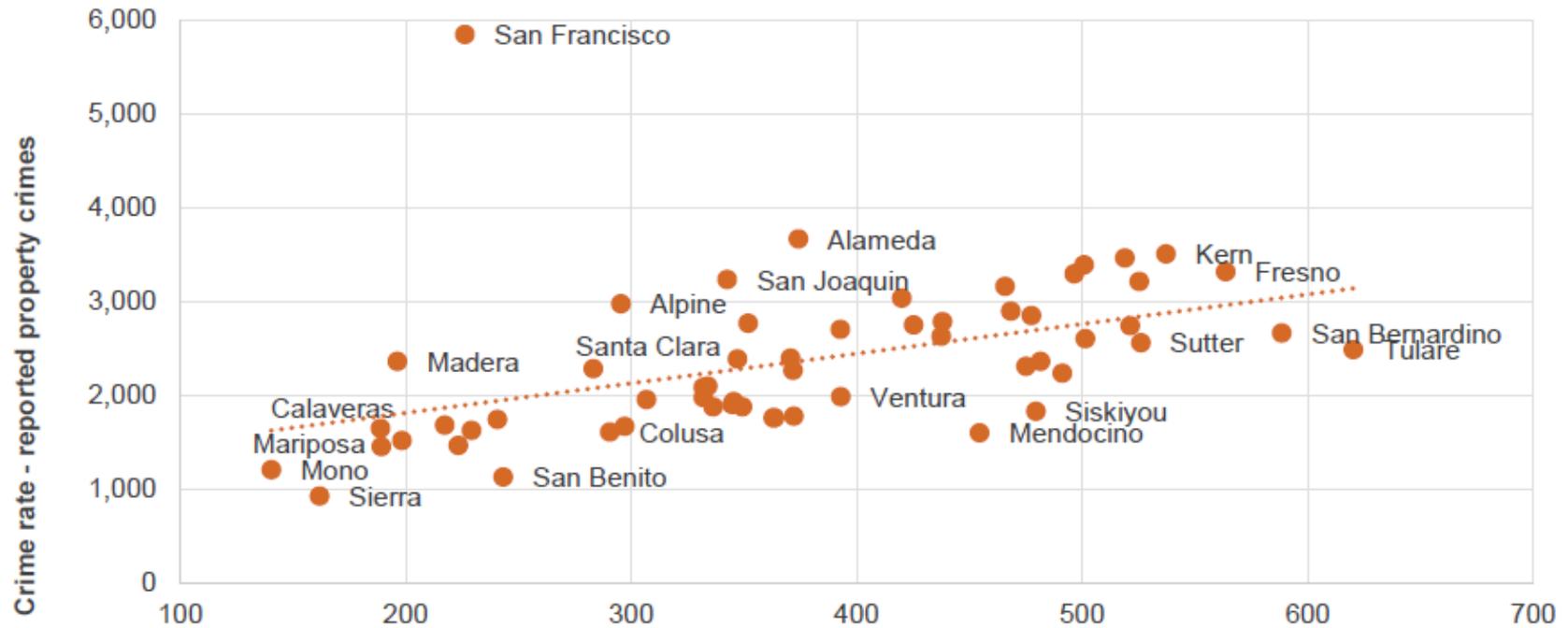
**FIGURE 3**

Arrest rates dropped significantly in the wake of realignment and Prop 47



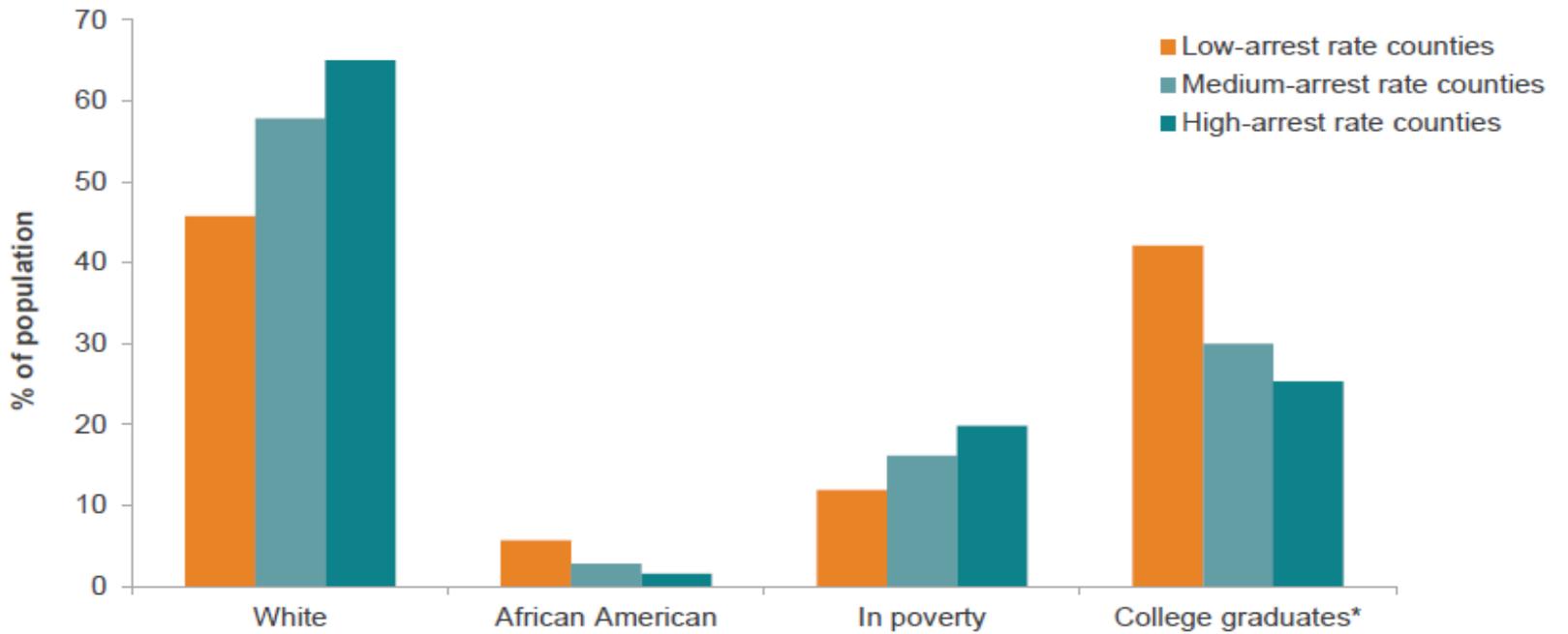
**FIGURE 5**

Counties with higher property arrest rates tend to have higher property crime rates



**FIGURE 6**

High-arrest counties tend to have higher shares of whites and higher poverty rates





**2019 TRENDS in..**

**The Legislature**

## SB 233 (Wiener)-p.26

Prohibits condoms from being used as evidence of prostitution [PC §647(b)], lewd acts in public [P.C. §647(a)], loitering with the intent to commit prostitution [P.C. §653.22], and committing a public nuisance [P.C. §372], regardless of the circumstances of a particular case.



**According to Author:** “Condoms have historically been confiscated and used as a tool to incriminate sex workers for prostitution.”

**IMPACTS:** Condoms would also be prohibited from being the basis for probable cause to arrest for the same offenses.

## SB 485 (Beall)-p.27

Repeals ability of court to delay, or order to DMV to delay, suspend or revoke a DL as a result of conviction for:

- ✓ Vandalism
- ✓ Controlled substance or alcohol use or possession
- ✓ Firearm use

## AB 1076 (Ting)-p.60

Requires DOJ, starting January 1, 2021 to identify persons eligible for conviction relief and if eligible, having their records withheld from public disclosure, and automatically granted relief without a petition or motion being filed.

## AB 46 (Carrillo)-p.85

Replaces terminology used to describe mental health conditions and individuals with mental health conditions:

- “Insane” → “mental health disorder”
- “Mentally incapacitated” → “lacks mental capacity”

**LE IMPACTS:** *May affect verbiage used in reports and/or court testimony to reflect current codes.*

## **AB 1215 (Ting)-p.96**

Prohibits until January 1, 2023, a law enforcement officer or agency from installing, activating, or using biometric software with a body-worn camera.



## **SB 136 (Wiener)-p.127**

For new felony convictions, requires that the current one-year sentence enhancement for each prior felony be imposed only for sexually violent offenses.

# 2020 Statute

- “Legislative Process” Section provides actual 2019 bill and analysis
- Unless noted, the following laws take effect January 1, 2020
  - Bills organized by category
- E-version of booklet contains link to bill language (via bill number)

# 2018 legislation with 2020 implementation date

**AB 1793 (Bonta)**- Expedites identification and notification of individuals eligible for recall or dismissal, dismissal and sealing, or re-designation of certain cannabis-related convictions.

➤ By July 1, 2020

- Requires prosecution to review all cases and determine whether to challenge the recall or dismissal
- Requires court to reduce or dismiss the conviction if prosecution does not challenge

**AB 2568 (Reyes)**- Jan 1, 2020- Requires county jail personnel, at intake, to ask if the person has served in the U.S. military and document responses for availability to them, their attorney, or the D.A.

**SB 978 (Bradford)**- Jan 1, 2020-POST and each LE agency must post on their website all standards, policies, practices, operating procedures, and education and training materials otherwise accessible via a PRA request.

**CIVIL  
PROCEDURE  
/COURT  
ORDERS**



## **AB 1638 (Oberholte)- p.22**

### **SEARCH WARRANTS: VEHICLE RECORDING DEVICES**

- Amends PC 1524 to allow law enforcement to obtain a search warrant to access vehicle event data recorder (EDR) information in cases of death or serious injury involving a motor vehicle.

# COMMUNICATIONS



# AB 956 (Diep)- p.33

## EMERGENCY ALERT NOTIFICATIONS

Clarifies that testing of 911, E911, and NG 911 emergency telephone systems for data accuracy and emergency alert notification system capabilities to the list of purposes for which auto dialer restrictions do not apply.

### WHY THE NEED?

While Existing law exempts local emergency and law enforcement agency emergency notifications from limitations on autodialer use, it does not expressly exempt the testing of 911 systems from those limitations.

### LAW ENFORCEMENT IMPACTS:

Will cover newer technologies (some that cities and counties have now and/or will acquire in the future) and allow mass notifications on a variety of platforms by LE and other agencies.

# AB 1079 (Santiago)- p.34

## TELECOMMUNICATIONS: PRIVACY PROTECTIONS

Authorizes mobile tech providers to provide phone numbers to public safety agencies without consumer consent for purposes of 911 testing.

### According to the author:



“There are many customers who have their telephone numbers unlisted or unpublished in public directories for various reasons, such as public safety or privacy concerns.

Although public safety officials may contact these numbers to respond to an emergency, they are not able to test their systems with these numbers beforehand. This puts thousands of Californians at risk of not receiving timely and critical information during an emergency. “

### LAW ENFORCEMENT IMPACTS:

By allowing agencies to obtain the telephone numbers of California residents for the purposes of testing state and local emergency alert systems, AB 1079 better prepares the state for the next disaster.

# AB 1747 (Gonzalez)- p.37

## CLETS: IMMIGRATION

### ➤ **Government Code Section 15160 (b)(1)**

Prohibits state law enforcement agencies from creating or maintaining databases including an individual's citizenship or immigration status for the purpose of immigration enforcement.

- Does not prohibit any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding citizenship or immigration status (lawful or unlawful).



# AB 1747 (Gonzalez)- p.37

➤ Commencing July 1, 2021, all shall apply:

- 1) Any inquiry for information from CLETS other than criminal history information submitted through the system shall include a reason for initiation of the inquiry.
- 2) Specifies that consistent with the California Values Act, CLETS shall not be used for purposes of immigration violations.
- 3) Provides that the AG may conduct investigations, including inspections and audits, as appropriate.

## LAW ENFORCEMENT IMPACTS:

You will be required, commencing July 1, 2021 to document the reason for the initiation of all non-criminal history inquiries on CLETS (i.e. the non-criminal history inquiries routinely made during traffic stops and at TC scenes).

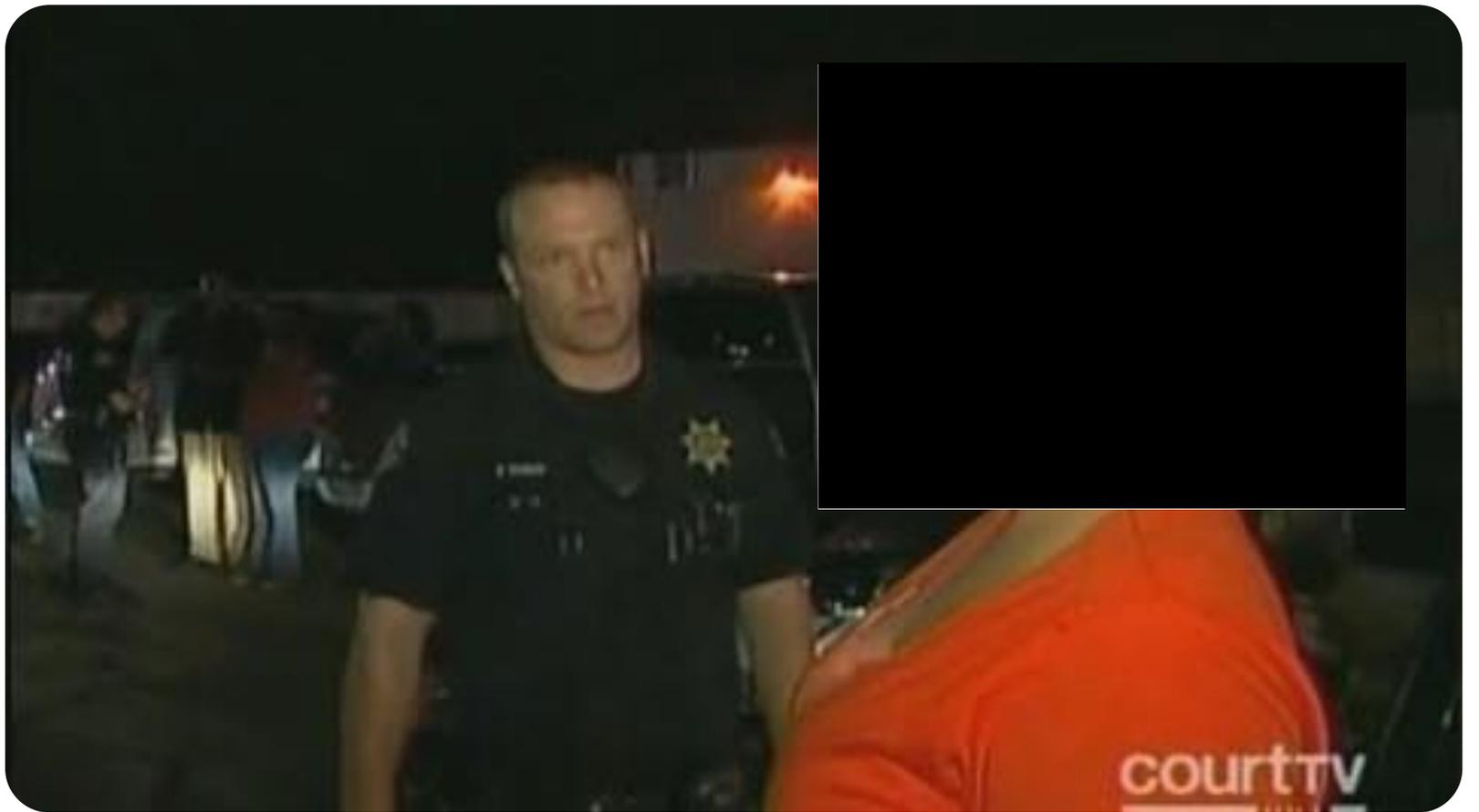


**CONTROLLED  
SUBSTANCES/  
NARCOTICS**

# AB 1261 (Jones-Sawyer)- p.46

## NARCOTICS REGISTRY

- Repeals all provisions of law requiring persons convicted of specified drug offenses to register with local law enforcement.
- Provides that all statements, photographs and fingerprints obtained under previous provisions requiring registration for controlled substances offenses are not open to the public and are only subject to inspection by law enforcement officers.
- Maintains law enforcement ability to notify school districts of arrests of enumerated offenses.





**CRIMES/  
CRIMINAL  
PROCEDURE**

# SB 439 (Umberg)- p.66

## WIRETAPPING: AUTHORIZATION & DISCLOSURE

Allows overheard communications to be disclosed (to a judge, investigator or LE officer) if they involve a grand theft involving a firearm or maliciously exploding or igniting a destructive device or any explosive causing bodily injury, mayhem or death.

Allows overheard communications involving any crime by a peace officer to be used in administrative or disciplinary hearings, not criminal cases.

### WHAT THIS BILL MEANS TO LAW ENFORCEMENT

When listening to a wiretap, information overheard relating to the following offenses could now be disclosed:

- Assault with a deadly weapon on a peace officer
- Rape of the unconscious
- Exploding a destructive device with intent to injure or intent to murder
- Rape of the unconscious person with a mental disorder or disability
- Furnishing illicit drugs to a minor
- Grand theft of a firearm
- Attempted kidnapping
- Attempted carjacking
- Attempted rape
- Residential burglary (person not present)

# SB 459 (Galgiani)- p.67

## CRIMES: RAPE: GREAT BODILY INJURY

Expands the list of crimes for which a five-year sentence enhancement would be applied to include victims of spousal rape or specified sexual crimes unable to resist due to intoxication by an anesthetic or controlled substance.



### WHAT THIS BILL MEANS TO LAW ENFORCEMENT

When prosecuting any rape by intoxication, there is a significant challenge of proving the degree of intoxication and consequently the ability to consent. The burden of proving consent where this an established relationship, particularly a marital relationship is also difficult to overcome in most cases.



**DATA/  
RECORDS**

# AB 1331 (Bonta)- p.69

## CRIMINAL JUSTICE DATA

Beginning July 1, 2020, expands the data that law enforcement entities are required to report to the Department of Justice related to every arrest to include the Criminal Investigation and Identification (CII) number and incident report number.

### **LAW ENFORCEMENT IMPACTS:**

Likely minor costs to each individual agency to report the additional data elements to DOJ. Local costs to comply with this measure likely would be subject to reimbursement from the General Fund as a state-mandated local program, the extent of which would be determined by the Commission on State Mandates. (General Fund, local funds).

## AB 1600 (Kalra)- p.70

### PEACE OFFICER RECORDS DISCOVERY

- Shortens the notice requirement for *Pitchess* motions from 16 days to 10 days.
- Repeals the exemption from disclosure of records of supervisory officers who were not present and not involved in the incident being litigated.
- Now makes supervisor records discoverable if they issued command directives to involved officers or had command influence over the incident.
  - No requirement that the supervisor be present, observe any of the alleged conduct, or even have contact with the complainant.

# FIREARMS



# GVRO's

\*These bills take effect September 1, 2020

## AB 12 (Irwin)- p.73

Extends duration of a GVRO to 5 years and allows a LE agency to be named by an officer in the petition in lieu of themselves.

### LAW ENFORCEMENT IMPACTS:

At the termination of the 1-5-year prohibition, LE may have to assist the attorney to determine if the person still meets PC 18175.

## AB 61 (Ting)- p.74

Expands category of persons who can petition for a temporary, one-year or renewal GVRO to include:

- Coworker (who has regular interactions with petition subject)
- Employer
- Employee or teacher of secondary school or postsecondary school subject has attended within the last six months

### LAW ENFORCEMENT IMPACTS:

It is possible that the Watch Commander of field Sergeant may be provided a GVRO by a citizen that LE does not know about. Therefore, additional GVRO training may be needed to face these orders.

# FIREARMS TRANSFERS

## AB 1292 (Bauer-Kahan)- p.78

Specifies circumstances which allow a firearm to be transferred from one person to another by operation of law without the need to go through a firearms dealer.

PC 25570: Exempts an individual from specified prohibitions on possession and transfer of firearms (including open carry) when the individual is delivering a firearm to law enforcement these circumstances:

- Person gives prior notice to the LE agency that they are transporting the gun
- Person took the gun from someone who was committing a crime against them and notified a LE agency that they are transporting it for disposition

## SB 61 (Portantino)- p.79

Extends the prohibition on purchasing more than one handgun a month to include semiautomatic centerfire rifles.

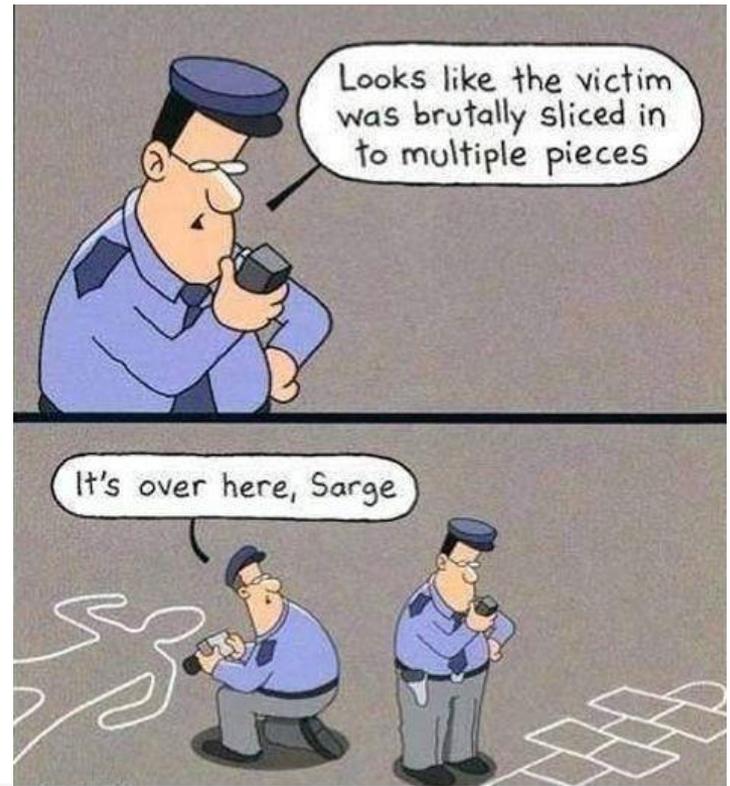
Exempts the following from the “one gun a month” prohibition:

- Any law enforcement agency
- Any state or local correctional facility
- Any person who is properly identified as a full-time peace officer and who is authorized to and does carry a firearm during the course and scope of employment as a peace officer.

A decorative sign with the word "Intermission" in a gothic font, surrounded by ornate scrollwork. The sign is white on a black background. The word "Intermission" is written in a white, gothic-style font, centered within a decorative, ornate frame of white scrollwork and flourishes. The frame is rectangular with rounded corners and features intricate, symmetrical designs. The background is solid black. In the bottom-left corner of the overall image, there are diagonal stripes in blue and white.

Intermission

# FORENSICS/ DNA

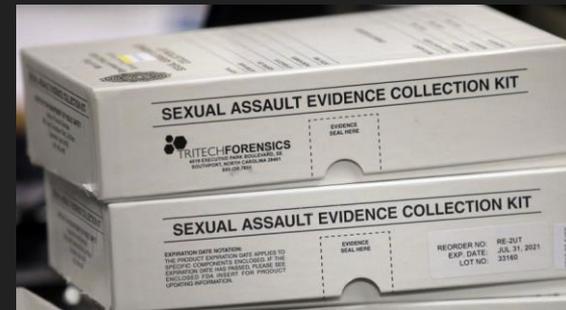


Funny Pictures on [www.LeFunny.net](http://www.LeFunny.net)

# SB 22 (Leyva)- p.83

## RAPE KITS: TESTING

States that a law enforcement agency in whose jurisdiction a specified sex offense occurred, for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016, **shall either submit the sexual assault forensic evidence to a crime lab within 20 days after it is booked into evidence, or ensure that a rapid turnaround DNA program is in place** to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.



### LAW ENFORCEMENT IMPACTS:

Additional personnel may be required to process evidence within required timeframe(s)

# LOCAL OPERATIONS & POLICIES

**POLICIES**

**PROCEDURES**

# POLICIES & PROCEDURES

## AB 339 (Irwin)- p.93

Requires agencies to develop and adopt written policies and standards regarding use of GVRO's on or before January 1, 2021.

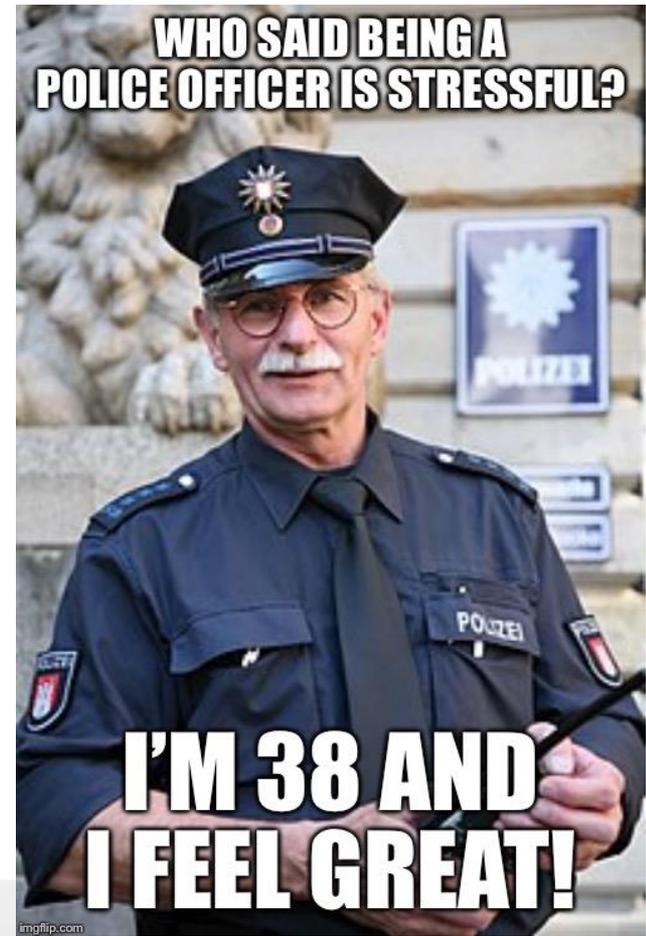
### LAW ENFORCEMENT IMPACTS:

Agencies with existing GVRO policies, or agencies without one will need to address the minimums in this bill by 2021.

## SB 338 (Hueso)- p.97

Requires a LE agency that adopts or amends its policy regarding senior and disability victimization after April 13, 2021 to include information and training on elder and dependent abuse.

MISC.



# *AB 309*



*Vehicles that appear to be used by law enforcement: ownership or operation by public historical society or museum*

# AB 1222 (Arambula)- p.105

## LIVING ORGAN DONATION

Requires a public employer to grant an employee an additional unpaid leave of absence, not exceeding 30 business days in a one-year period, for the purpose of organ donation, *if employee has exhausted all sick leave*

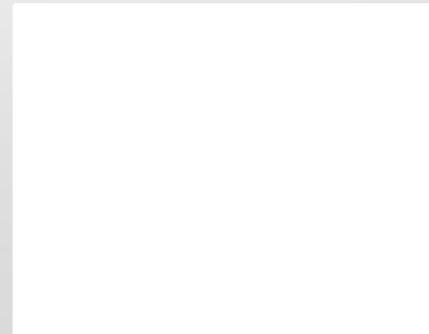


## **SB 192 (Hertzberg)-p.106**

Repeals the posse comitatus provision of the Penal Code, which makes an able-bodied person 18 years of age or older who neglects or refuses to assist a peace officer or a judge in making an arrest, retaking an escaped person into custody, or preventing the breach of the peace, subject to a fine between \$50-\$1000.

## **SB 310 (Skinner)-p.108**

Makes a felon who is not currently on parole, PRCS, probation or mandated supervision, who is not a 290-sex offender or currently incarcerated eligible to serve on a jury.



# RULES OF THE ROAD



# *AB 1266*



*Traffic control devices: bicycles*

*pg. 120*

*AB 1614*



*Vehicles: license plate program*

*pg. 121*

# *AB 1810*

*Transportation: Omnibus bill – Marijuana  
ingestion and Motor Carrier of Property  
Permits*

*SB 112*



*Transportation: Omnibus – motorcycle  
modified exhaust*

*pg. 123*

# *SB 395*



## *Accidental Taking and Possession of Wildlife*

*pg. 124*

*SB 543*



*Pedicabs*

pg. 125

**TRAINING**

The image features a dark grey background on the left side. A large, bold, white sans-serif word 'TRAINING' is positioned in the middle-left area. To the right of the text, there is a complex geometric composition. It includes a white rectangular area at the top right, a light grey area at the bottom right, and several overlapping diagonal bands. These bands consist of a dark grey outer layer, a thin white inner layer, and a vibrant blue central layer. The overall aesthetic is modern and minimalist.

## SB 273 (Rubio)- p.129

### DOMESTIC VIOLENCE TRAINING

Extends window to prosecute a felony DV crime from three years to five years and makes changes to DV training.

PC 13519 (a): Requires DV training to include a brief, current and historical context on communities of color impacted by incarceration and violence.

- DV experts included in trainings may include victims of domestic violence and people who have committed the offense (and have are in the process of being rehabilitated).



# SB 273 (Rubio)- p.129

(cont'd)

➤ Training must include:

- Methods of ensuring victim interviews occur in a venue separate from alleged perp and with appropriate sound barriers ( to prevent overhearing conversation)
- Questions for victim, including:
  - a) Whether the victim would like a follow-up visit to provide needed support or resources
  - b) Information regarding a GVRO and protective order
  - c) A verbal review of resources available to victim(s)



## SB 273 (Rubio)- p.129

(cont'd)

- One representative from an organization working to advance criminal justice reform and one representative of an organization working to advance racial justice be added to the group with whom POST must consult in developing DV training for law enforcement.



**USE OF  
DEADLY  
FORCE**

**CRIME SCENE**

**NOT CROSS**



# FAILED 2018 LEGISLATIVE ATTEMPTS

## AB 931 (WEBER) & USE OF FORCE

**AB 931**-Limited the use of deadly force by a peace officer to those situations where it is necessary to prevent imminent and serious bodily injury or death to the officer or another person.

- “*necessary*” means that, given the totality of the circumstances, a reasonable peace officer would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or another person.



# What's the legal standard?

*U.S. Supreme Court*

*Graham v. Connor, 490 U.S. 386 (1989)*

The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

# AB 392 (2019): When First Introduced

PC 196. (a) Homicide is justifiable when committed by public peace officers and those acting by their command in their aid and assistance, under any of the following circumstances:

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(4) When, subject to subdivision (b), the officer reasonably believes, based on the totality of the circumstances, that the use of force resulting in a homicide is necessary to prevent the escape of a person.....

(b) As used in paragraph (4) of subdivision (a), “necessary” means that, given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person. The totality of the circumstances means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force.

(c) Neither this section nor Section 197 provide a peace officer with a defense to manslaughter in violation of Section 192, if that person was killed due to the criminally negligent conduct of the officer, including situations in which the victim is a person other than the person that the peace officer was seeking to arrest, retain in custody, or defend against, or if the necessity for the use of deadly force was created by the peace officer’s criminal negligence.



**AB 392**

**Weber**

**Special Order of Business**

**PEACE OFFICERS: DEADLY FORCE.**

**California State Assembly**

# AB 392 (Weber)- p.133

## PEACE OFFICERS: DEADLY FORCE

### PC 196

- Specifies that homicide is justifiable when committed by a peace officer and those acting by their command in their aid and assistance, under either of the following circumstances:
  - In obedience to any judgment of a competent court; or
  - When the homicide results from a peace officer's use of force that is in compliance with the standards of Penal Code Section 835a.



Photo: Tony Webster / Flickr

# AB 392 (Weber)- p.133

## PC 835a:

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

# AB 392 (Weber)- p.133

## PC 835a:

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

# AB 392 (Weber)- p.133

## PC 835:

(b): Provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c)(1): a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the **totality of the circumstances**, **that such force is necessary** for either of the following reasons:

- a) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.
- b) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Specifies that the “totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

# AB 392 (Weber)- p.133

## PC 835:

(c)(2): Provides that a peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

(d): A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance.

For the purposes of this subdivision, “retreat” does not mean tactical repositioning or other deescalation tactics.



# AB 392 (Weber)- p.133

Effective January 1, 2020

## WHAT THIS BILL MEANS TO LAW ENFORCEMENT

- Does not mean that force itself is ultimately necessary, rather, objectively reasonable force must appear to be necessary.
- Awkwardly puts into code the “objectively reasonable” standard you’ve been trained on as a result of *Graham v. Connor*, *Tennessee v. Garner*, and other United States Supreme Court case law.

# SB 230 (Caballero)- p.136

## LAW ENFORCEMENT: USE OF DEADLY FORCE: TRAINING: POLICIES

Requires law enforcement agencies to maintain a policy by January 1, 2021 that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents.



# SB 230 (Caballero)- p.136

Each agency's policy shall include all of the following:

- A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when *feasible*.
  - “*Feasible*” means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.
- A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as **determined by an objectively reasonable officer under the circumstances** based upon the totality of information actually known to the officer.
- Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.



## SB 230 (Caballero)- p.136

- A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is **necessary, as determined by an objectively reasonable officer under the circumstances**, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- Comprehensive and specific guidelines for the application of deadly force.
  - “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.

# FAILED 2019 LEGISLATION

- **AB 401 (Flora)**- Would make a 5<sup>th</sup> DUI conviction (which occurs within 10 years of the 4<sup>th</sup>) a felony.
- **AB 516 (Chiu)**- Would delete the authority for law enforcement and local officials to tow and impound, or immobilize a vehicle that has five or more delinquent parking tickets or traffic violations and would also modify the authority for those entities to tow and impound a vehicle left standing on a road for 72 hours or more in violation of a local ordinance.
- **AB 1076 (Kiley)**- Makes it a violent felony to commit human trafficking or persuade a minor to engage in a commercial sex act, with intent to commit pimping, pandering, or child pornography.

# WHAT TO EXPECT IN 2020

- Attempts to further expand releasable records by ACLU, EFF and other civil rights groups
- Expansion of alcohol sales to 4 a.m.
- Creation of “shooting galleries,” a.k.a. injection sites with no drug violations
- Further gun control measures
  - Timeframe on firearm component purchases?
- Ban of peace officers with conviction history

# WHAT TO EXPECT IN 2020

(cont'd)

## **Proposal from DOJ to CPOA/CSSA/CPCA**

- Funding to insure the adequate provision of mental health services to law enforcement officers state-wide;
- Finding a way to offer access to these services that will help avoid the stigma that can sometimes be associated with them within the law enforcement community;
- Developing programs / courses of treatment that include a continuum of care for those in need;
- Focusing on services and programs available to officers involved in officer involved shootings and other traumatic events.

# RESOURCES

Legislative Tracking: [www.leginfo.legislature.ca.gov](http://www.leginfo.legislature.ca.gov)

CA Crime Statistics: [www.openjustice.doj.ca.gov](http://www.openjustice.doj.ca.gov)

Criminal Justice Publications: [www.lao.ca.gov](http://www.lao.ca.gov)

CPOA Advocacy: [www.cpoa.org/advocacy](http://www.cpoa.org/advocacy)

28<sup>th</sup> Annual

# LAW ENFORCEMENT LEGISLATIVE SUMMIT

March 3-4, 2020

Sheraton Grand, Sacramento, CA



Register online at [www.cpoa.org](http://www.cpoa.org)

THANK  
YOU

