

22-01 - 2022 Legislative Update

Los Angeles County Sheriff's Department
NEWSLETTER
Field Operations Support Services



2022 LEGISLATIVE UPDATE

The following is a brief summary of selected law enforcement-related legislative changes that may affect some divisions. These changes take on effect January 1, 2022, unless otherwise noted. This summary is intended as a quick reference source and is, therefore, limited to major changes. It does not include every legislative change affecting law enforcement. **The text of the statute and the Department Manual of Policy and Procedures should be reviewed prior to initiating law enforcement activity based on the information in this newsletter.**

The California Peace Officer's Legislative and Legal Digest can be found on the Field Operations Support Unit intranet site at [2022 Legislative Legal Digest](#)

For further information, the complete text of statutes and California Codes can be found on the California Legislative Information website at <http://leginfo.legislature.ca.gov>

CRIMES/CRIMINAL PROCEDURE

Participation in a criminal street gang: enhanced sentence

Penal Code Section 186.22 (Amend) 1109 (Add)

This amendment redefines the terms "pattern of criminal gang activity" and "criminal street gang" for the purposes of the gang offense, enhancement, and alternate penalty under the STEP Act and requires bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

Criminal procedure: arraignment and trial

Penal Code Sections 977, 1043, and 1043.5 (Amend)

This amendment allows a defendant who is in custody to appear by counsel in criminal proceedings, with or without a written waiver, if the court makes specified findings on the record by clear and convincing evidence.

The Sheriff's Department will not physically remove the defendant from their jail cell to bring the defendant to

court (i.e., out of fear of injury to themselves, injury to the defendant, or out of concern of enhancing the risk of contracting an illness). This fear of physical contact has been exacerbated by the COVID pandemic.

In addition, this amendment would allow a preliminary examination or trial to proceed when there is clear and convincing evidence that an in-custody defendant is voluntarily refusing to appear. This bill will help move these cases along and mitigate the backlog of cases that are piling up from the pandemic's impact on our court system.

Criminal procedure: victim and witness privacy

Penal Code Section 1054.2 (Amend)

This prohibits an attorney from disclosing all personal identifying information of a victim or witness instead of merely prohibiting the disclosure of their address and telephone number.

Wage theft: grand theft

Penal Code Section 487(m) (Add)

This addition creates a new offense for the intentional theft of wages by an employer, punishable as either a felony or a misdemeanor.

Criminal law

Government Code Section 12525.3 (Amend), Penal Code Sections 11106, 11108.2, 26406, 27505, 27570, 28050, 28055, 28100, 28210, 28215, 28220, 28230, 29610, 29615, 29700, 29750, 31700, and 32000 (Amend) 16685, 26537, 27963, 31833, and 31834 (Add) and Section 27945 (Repeal and Add):

1) Makes changes to hunting licenses and minors in possession of firearms.

2) Clarifies what qualifies as an "unarmed" civilian to trigger investigations of officer involved shootings by the Attorney General's office.

Last year, the legislature gave the authority to state prosecutors (or the Attorney General) to investigate shootings by peace officers of unarmed civilians that result in death. This bill also grants the Attorney General the authority to investigate instances where there is a reasonable dispute as to whether the civilian was armed or unarmed.

EMPLOYMENT OF PEACE OFFICERS

Peace officers: minimum qualifications

Government Code Section 1031.4 (Add) and Penal Code Section 13511.1 (Add)

Effective Dates: January 1, 2022 (for new age minimum)

January 1, 2023 (for policing degree program development)

This addition requires all peace officers employed by agencies that participate in the Peace Officer Standards and Training (POST) program, who are not employed in or enrolled in the academy for that position as of 2024, to be at least age 21 and meet specified education requirements.

Public employment: certification: civil rights

Civil Code Section 52.1 (Amend) Government Code Section 1029 (Amend)

Penal Code Sections 832.7, 13503, 13506, 13510, 13510.1, (Amend) and 13509.5, 13509.6, 13510.8, 13510.85, and 13510.9 (Add)

(1) Grants new powers to POST to investigate and determine peace officer fitness for duty and to decertify officers who engage in serious misconduct.

(2) Makes changes to the Bane Civil Rights Act to limit immunity, as specified.

FIREARMS

Firearms

Family Code Section 6216 (Add) and Penal Code Section 16520 (Amend, Repeal and Add)

Effective Date: July 1, 2022

Will update the definition of "firearm" as a frame, receiver, or precursor part for the purpose of surrender or seizure pursuant to a Gun Violence Restraining Order (GVRO) and a domestic violence restraining order.

LOCAL OPERATIONS & POLICIES

Agency policies: arrests: positional asphyxia

Government Code Section 7286.5 (Amend)

This amendment prohibits a law enforcement agency from authorizing techniques and transport methods that involve a substantial risk of positional asphyxia.

In summary, monitor a suspect closely if you have applied a hobble, tarp, other restraint device, or have used bodyweight for any significant period of time to control a suspect.

Place a suspect in a proper recovery position, or take other appropriate steps, when a suspect complains of the inability to breathe, or exhibits signs of the inability to breathe (turning blue, for example).

Peace officers: law enforcement gangs

Penal Code Section 13670 (Add)

This addition requires all law enforcements agencies to maintain a policy prohibiting participation in a law enforcement gang and makes a violation of that policy grounds for termination.

Law enforcement: social media

Penal Code Section 13665 (Add)

This addition limits a police department and sheriff's department from sharing a booking photo of an individual on social media.

Public peace: media access

Penal Code Section 409.7 (Add)

This addition allows 'reporters' to have access to areas shut off by police for a command post or similar during a protest, march, rally, etc.

NOTE – Policy changes are currently in the approval process. Review Newsletter [20-21](#) and [21-19](#) for information pending the publishing of the new policy.

MISCELLANEOUS

Public safety omnibus

Various Codes

This bill is the annual Public Safety Omnibus bill and makes corrective, non-controversial changes to various code sections relating generally to criminal law.

PC 16590 Removes nunchuks or "nunchaku" from the list of deadly weapons. In related sections, notes that a "billy," "blackjack," or "slungshot" does not include a nunchaku.

RECORD RELEASE

Peace officers: release of records

Evidence Code Section 1045 (Amend) and Penal Code Sections 832.5, 832.7, and 832.12 (Amend) and 832.13 (Add)

These changes expand the categories of police personnel records that are subject to disclosure under the California Public Records Act (CPRA); and modifies existing provisions regarding the release of records subject to disclosure.

PC 832.5 (b) Complaints and any reports or findings relating to these complaints shall be retained for a period of no less than 5 years (not sustained) and no less than 15 years for sustained findings of misconduct.

PC 832.7 Requires disclosure of an incident involving use of force that resulted in death or Great Bodily Injury

(GBI). A sustained finding involving a complaint that alleges unreasonable or excessive force. A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

Incidents in the new categories of offenses added by this bill that occurred before January 1, 2022, shall not be required to be disclosed until January 1, 2023. However, records of incidents that occur after January 1, 2022, shall be subject to disclosure pursuant to the provisions of this bill.

RULES OF THE ROAD/TRANSPORTATION

Off-highway vehicles: reciprocity

Amends Vehicle Code Section 38010

The bill establishes reciprocity agreements between states for off-highway vehicles.

Vehicles: trailers

Amends Vehicle Code Sections 12804.9 and 12804.12

Effective Date: January 1, 2027

This amendment allows drivers with a class C driver license to operate a vehicle towing a trailer between 10,001 pounds and 15,000 pounds gross vehicle weight rating or gross vehicle weight, provided that the trailer is utilized for either purely recreational purposes, or the transportation of property or human habitation, or both.

USE OF FORCE

Peace officers: use of force

Government Code Section 7286 (Amend)

This amendment requires use of force policies for law enforcement agencies to include the requirement that officers "immediately" report potential excessive force, and further describes the requirement to "intercede" if another officer uses excessive force.

Law enforcement: use of force

Government Code Sections 12525.2 (Amend) and Penal Code Sections 13652 and 13652.1 (Add)

This change requires kinetic energy projectiles or chemical agents to only be used by peace officers:

- Who have received training on their proper use in a POST approved course;
- For crowd control, if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer; or
- Bring an objectively dangerous and unlawful situation safely and effectively under control; and

- In compliance with specified requirements.

NOTE – Policy changes are currently in the approval process. Review Newsletter [20-21](#) for information pending the publishing of the new policy.

CASE LAWS

Fourth Amendment

People v. Flores (2021) 60 Cal.App.5th 978- Terry stops

Do police have a reasonable basis to conduct a Terry stop when a suspect walks away, conceals himself from officers as they approach, and ignores requests to stand up?

RULE: Officers are permitted to make commonsense judgments and inferences about human behavior, and such factors can provide a reasonable basis to detain someone and investigate further.

In re Edgerrin J. (2020) 57 Cal.App.5th 752- Reasonable suspicion for detention

Is there reasonable suspicion for a detention based on a neighbor's tip about a parked car occupied by four teens "acting shady" in a high crime area?

RULE: Even a brief investigatory detention requires reasonable suspicion—"specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity."

People v. Kasrawi (2021) 65 Cal.App.5th 751- Detention v. consensual encounters and the Attenuation Doctrine

May police detain a person because he is in a residential area late at night where burglaries have occurred? When does the use of a spotlight in combination with other factors constitute a detention? And if such a detention is unlawful, must the evidence obtained be suppressed even if the officer discovers that the person has an outstanding arrest warrant?

RULES: Merely being out late at night in an area where burglaries have occurred is not reasonable suspicion justifying a detention. A detention occurs if facts are present that remove any ambiguity as to whether a person is free to leave. Pulling up behind a car and using a patrol car spotlight may be a detention if combined with additional circumstances. An unlawful detention does not result in suppression if an outstanding arrest warrant was discovered prior to the search.

Torres v. Madrid (2021) 141 S.Ct. 989- Seizure by deadly force

When an officer shoots someone to detain/restrain them, but the suspect temporarily eludes capture, was there a "seizure" for purposes of the Fourth Amendment?

RULE: "The application of physical force"—in this case bullets—"with intent to restrain is a seizure, even if the force does not succeed in subduing the person."

People v. Tousant (2021) 64 Cal.App.5th 804- Exceptions, cell phone searches, “interrogations”

May police conduct a warrantless search of a vehicle, including a cell phone left behind inside it, when the vehicle is suspected of being involved in a shooting? What is the standard for obtaining a search warrant to search cell phone data? What is the threshold for when a police interaction becomes an interrogation for purposes of *Miranda*?

RULES: A warrantless search of a vehicle is lawful where there is probable cause it was involved in a crime. A cell phone in plain view inside such a vehicle may be seized, but its data may not be searched without a search warrant. If an officer has reason to believe a suspect’s answer may incriminate him, even routine questioning may amount to interrogation.

People v. Hall (2020) 57 Cal.App.5th 946- Cannabis in cars

Is a plastic baggie of marijuana considered an “open container” sufficient to allow search of a vehicle?

RULE: A warrantless search of a vehicle for a violation of Health and Safety Code, § 11362.3(a) (4) is permissible as long as the officer has specific, articulable facts demonstrating that a particular plastic baggie constitutes an “open container.”

People v. Moore (2021) 64 Cal.App.5th 291- Cannabis in cars

Can officers rely on their training and experience when articulating the probable cause justifying a search conducted pursuant to the automobile exception?

RULE: A vehicle search may be based on an odor of marijuana if the officer can articulate a reasonable basis for concluding that more than one ounce was in the vehicle. This may require an officer to describe his or her expertise in discerning the differences between the odors of burnt marijuana and fresh marijuana.

Caniglia v. Strom (2021) U.S., 141 S.Ct. 1596- Community caretaking in homes

Does “community caretaking” allow police to enter and search a home to remove firearms absent evidence of an emergency?

RULE: A warrantless search of a home is unlawful if based merely on “community caretaking” for the welfare of the homeowner, i.e., where officers are not actively investigating a crime, and there is no emergency.

Lange v. California (2021) U.S., 141 S.Ct. 2011- Hot pursuit of misdemeanant into residence

When may officers pursue a fleeing suspect into a home if the crime is only a misdemeanor?

RULE: The commission of the misdemeanor crime of failing to comply with a lawful order [Vehicle Code, § 2800(a)] does not, on its own, allow an entry into a residence under the “hot pursuit” exception. The new formula for “hot pursuit” entries following flight after the commission of a misdemeanor requires (1) the commission of an offense, (2) flight, and (3) an exigency. This rule does not apply to a “hot pursuit” following the commission of a felony.

People v. Nunes (2021) 64 Cal.App.5th 1- Exigent circumstances exception

After responding to a call of a “whole structure fire,” finding no fire, and detecting the smell of smoke “not consistent with cooking,” could a fire captain open a cabinet in a backyard shed?

RULE: The justification for a search based on exigent circumstances ends when the emergency passes.

People v. Roberts (2021) 68 Cal.App.5th 64- Use of felony arrestee’s DNA sample

Does a district attorney’s post-arrest decision not to file charges mean that law enforcement cannot analyze that arrestee’s DNA identification sample taken at booking?

RULE: If an arrest was based on probable cause, law enforcement may analyze and compare an arrestee’s DNA even if he was not later charged for the crime of arrest.

People v. Wilson (2020) 56 Cal.App.5th 128- Search of email attachments after flagging

Did it violate the Fourth Amendment when the government viewed email attachments, without a warrant, that had been flagged as depicting child pornography and provided by the private company that hosts the email server?

RULE: The Fourth Amendment does not apply to private searches and does not prohibit the governmental use of information in which any expectation of privacy was already frustrated by a private party search.

Fifth Amendment

In re J.W. (2020) 56 Cal.App.5th 355- Routine booking questions

Does the admission of minor’s response to routine booking questions about age and date of birth violate his privilege against self-incrimination absent *Miranda* warnings when a minor’s age is an element of the crime?

RULE: Under the “routine booking question,” an arrestee’s answers to core booking questions are admissible in the absence of *Miranda* warnings.

People v. Potter (2021) 66 Cal.App.5th 528- Miranda custody of adult suspect

Under what circumstances should an investigator give *Miranda* warnings to a suspect who voluntarily comes to the police station, answers questions, and leaves without being arrested?

RULE: *Miranda* warnings must be given if, based on the totality of circumstances, a reasonable person in the suspect’s position would not feel free to end the interrogation.

In re Matthew W. (2021) 66 Cal.App.5th 392- Miranda custody of juvenile suspect

Under what circumstances should a detective give *Miranda* warnings to a 17-year-old suspect who is questioned at his home and is arrested at the conclusion of the interrogation?

RULE: *Miranda* warnings must be given if, based on the totality of circumstances, a reasonable juvenile in the suspect's position would not feel free to end the interrogation.

People v. Sumagang (2021) 69 Cal.App.5th 712- Illegal "two-step" interrogation to evade Miranda

When a suspect is questioned about the details surrounding a crime, may law enforcement wait until after he confesses to give him *Miranda* warnings and then question him further?

RULE: A person subjected to custodial interrogation must, in advance, be advised of their *Miranda* rights in order for their statements to be admissible at trial. Questioning a suspect first, waiting until after a confession is given, and then give *Miranda* warnings before continuing questioning is a prohibited tactic.

If you have any questions, please call or email Field Operations Support Services Unit at [REDACTED TEXT]