



DEPARTMENT NOTICE

22-024
02/25/22

2022 Legislative Updates

The following legislative updates are meant as a summary of changes to the law. For exact language, please refer to the specific code section referenced. Members who need clarification are encouraged to ask a supervisor or contact the Legal Division of the Risk Management Office.

Penal Code

Penal Code §§ 186.22 and 1109, through Assembly Bill 333, redefine the terms “pattern of criminal activity” and “criminal street gang” for the purpose of the gang offense, enhancement, and penalty under the STEP Act. Looting, felony vandalism, offenses related to unlawful theft or use of an access card, and unlawful use of personal identifying information were removed from the list of crimes that define “pattern of criminal activity.” There are now requirements for bifurcation of gang-related prosecutions that are not gang-related and changes to how a court sentences on a gang enhancement.

Penal Code § 487m creates a new offense for the intentional theft of wages by an employer. It is calculated in a consecutive 12-month period and must be over \$950 from any one employer or \$2,350 from two or more employers. A violation of this section is punishable as felony or misdemeanor grand theft.

Penal Code § 409.7 allows reporters to access closed-off areas surrounding command posts, police lines, or rolling closures at demonstrations, marches, protests, or rallies where individuals are engaged in First Amendment activity.

Penal Code § 490.4 re-establishes the crime of organized retail theft until January 1, 2026, and further empowers the existence of a taskforce established by the California Highway Patrol to assist local law enforcement agencies in counties with elevated crime.

Penal Code § 801.7 amends the existing statute of limitations for a felony violation of unlawful access of computer services (Penal Code § 502) to authorize prosecution within three years of the discovery of the offense, or within three years after which the offense could have reasonably been discovered, provided that the filing of the criminal complaint is within six years of the commission of the offense.

Penal Code §§ 680.1 and 680.3 provide sexual assault survivors the ability to track their own sexual assault evidence kit privately, securely, and electronically through the Sexual Assault Forensic Evidence Tracking (SAFE-T) database. The California Department of Justice is tasked with working with local law enforcement agencies and crime victim groups to establish this process and it must be in place and active on or before July 1, 2022.

Penal Code § 817 was amended to add language which requires that before issuing an arrest warrant, a magistrate examine a “a declaration of probable cause made by a peace officer *or*,

when the defendant is a peace officer, an employee of a public prosecutor's office of this state . . .

Penal Code § 1054.2 prohibits an attorney from disclosing to a defendant, defendant's family, or anyone else, the personal identifying information of a victim or witness. Personal identifying information is defined in Penal Code § 530.55 and does not include name, place of employment, or an equivalent form of identification. The existing misdemeanor penalty for willfully disclosing such information was eliminated.

Penal Code §§ 11106, 11108.2, 16685, 26406, 26537, 27505, 27570, 27945, 27963, 28050, 28055, 28100, 28210, 28215, 28220, 28230, 29610, 29615, 29700, 29750, 31700, 31833, 31834, and 32000, through Senate Bill 715, enact a number of changes to California's firearm laws. Minors are prohibited from possessing a semiautomatic centerfire rifle, subject to exceptions. Minors are prohibited, as of July 1, 2023, from possessing any firearm, subject to exceptions. New restrictions have been placed on firearm dealers related to returning firearms. Federally licensed manufacturers of ammunition are exempt from state licensing requirements. Changes were made to statutes surrounding hunting licenses.

Penal Code §§ 1203.4, 1203.4a, 1203.4b, 1203.425 were updated to clarify that expungement of a criminal conviction does not release a defendant from unexpired criminal protective orders in connection with specific domestic violence, elder or dependent adult abuse, stalking, or sex offenses.

Penal Code § 13670 requires law enforcement agencies to maintain a policy prohibiting participation in a law enforcement gang and makes a violation of the policy grounds for termination. Law enforcement agencies shall cooperate with any investigation into these gangs by an authorized agency.

Law enforcement gang is defined as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

Penal Code § 13665 prohibits law enforcement agencies from sharing, on social media, booking photos of an individual arrested on suspicion of committing a nonviolent crime unless certain circumstances are met. A nonviolent crime is a crime not identified in Penal Code § 667.5(c).

Note: this section only applies to booking photos.

Penal Code § 261 and multiple other code sections defining rape were expanded to include spousal rape.

Peace Officer: Minimum Qualifications

Government Code § 1031.4 sets forth, with some exceptions, that the minimum age for a peace officer is 21. This section does not apply to any person who, as of December 31, 2021, is enrolled in a basic academy or is employed as a peace officer in California.

Penal Code § 13511.1 requires POST and other stakeholders to develop a modern policing program. By June 1, 2023, the office of the Chancellor of the California Community Colleges, shall submit a report on recommendations to the Legislature outlining a plan to implement the program. The recommendations must include, amongst other things, that both the modern policing degree program and a bachelor's degree are minimum education requirements for employment as a peace officer. Within two years of the submission of the report, POST shall approve and adopt education criteria for peace officers based upon the recommendations of the stakeholders.

Peace Officer: Certification: Civil Rights

Civil Code § 52.1; Government Code § 1029; Penal Code §§ 13503, 13506, 13510, 1351.1, 13509.5, 13509.6, 13510.8, 13510.85, and 13510.9 were amended or added through Senate Bill 2.

Under the Tom Bane Civil Rights Act, civil actions can be brought against a person, whether or not acting under color of authority, who interferes or attempts to interfere, by threats, intimidation, or coercion, with the exercise or enjoyment of rights secured by United States Constitution, California Constitution, or state law. Under SB 2, certain qualified immunity provisions for peace officers have been eliminated.

Existing law defines peace officers, the entities that can appoint them, minimum training requirements, minimum standards to be a peace officer including moral character and physical and mental condition, and certain disqualifying factors. Under SB 2, there are a number of new disqualifying provisions including felony convictions, certain specified crimes against the public including fabrication of records, bribery, or perjury, and decertification by POST. Additionally, under SB 2, POST is given expanded powers to investigate and determine the fitness of peace officers including a new division within POST to review investigations by law enforcement agencies of serious misconduct that may provide grounds for suspension or revocation of a peace officer's certification.

POST is obligated to adopt a definition of "serious misconduct" by January 1, 2023.

Peace Officer: Release of Records

Penal Code § 832.7, was expanded through Senate Bill 16 to expand the types of peace officer personnel records that are subject to release under a Public Records Act request. Records that are now subject to release include those related to: (1) a sustained finding that a peace officer

engaged in excessive or unreasonable force; (2) a sustained finding that a peace officer failed to intervene to prevent another peace officer from using clearly excessive or unreasonable force; (3) a sustained finding that a peace officer engaged in discrimination or prejudiced conduct; and (4) a sustained finding that a peace officer made an unlawful arrest or search.

Penal Code § 832.5(b) requires complaints and reports related to the complaints be retained for no less than 5 years and no less than 15 years for sustained findings of misconduct.

Law Enforcement: Military Equipment

Government Code §§ 7070, 7071, 7072, 7073, 7074, 7075 establish a number of requirements that must be met before a law enforcement agency may acquire and use military equipment.

Military equipment includes, but is not limited to, drones/unmanned aerial vehicles, certain firearms, “flashbang” grenades, certain command and control vehicles, and projectile launch platforms including “bean bags” and rubber bullets.

Law enforcement agencies are required to establish a military equipment use policy through a governing body and public process prior to purchasing or using the equipment. Agencies are also obligated to publish an annual report on the use of the equipment.

Use of Force

Government Code § 7286 requires use of force policies to include the requirement that officers “immediately” report potential excessive force, further describes the requirement to “intercede” if another officer is using excessive force and prohibits retaliation.

Government Code § 7286.5 was amended to include that a law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia. Positional asphyxia is defined as situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.

Government Code § 12525.2; Penal Code §§ 13652 and 13652.1, through Assembly Bill 48, prohibits the use of kinetic energy projectiles or chemical agents to disperse any assembly, protest, or demonstration except in compliance with specific standards. These weapons can only be used to defend against a threat to life or serious bodily injury, or to bring an objectively dangerous and unlawful situation safely and effectively under control. There are additional reporting requirements including that law enforcement agencies are also required to post a summary of when these weapons are used for crowd control.

Civil Code

Civil Code § 1724 makes it unlawful for a person to sell data, or sell access to data, that the person has obtained or accessed pursuant to the commission of a crime. It further makes it

unlawful for a person to purchase or use data from a source that the person knows or reasonably should know has obtained or accessed the data through the commission of a crime.

Note: this provides civil relief, a violation of this section does not constitute a crime.

Civil Code § 1708.5 expands what constitutes a sexual battery under the Civil Code to include nonconsensual condom removal.


Note: this provides civil relief, a violation of this section does not constitute a crime.

Government Code

Government Code § 945.9 allows for previously time-barred claims arising out of an alleged sexual assault by a law enforcement officer, modifies the statute of limitations for claims arising out of alleged sexual assault by a law enforcement officer, and exempts these claims from all state and local government claim preservation requirements.

Note: this section applies to civil actions for damages, it does not impact the statute of limitation in criminal cases.

Government Code § 12525.3 clarifies that the California Attorney General may investigate and gather facts in an incident involving a shooting by a peace officer that results in the death of a civilian if the civilian was unarmed *or if there is a reasonable dispute as to whether the civilian was armed.*


WILLIAM SCOTT
Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.