

I. Relevant Legislation in 2021

A. California Legislation:

Accountability:

- Accountability Reform Act AB 655: (Kalra) this bill would require that background investigation to include an inquiry into whether a candidate for specified peace officer positions has engaged in membership in a hate group, participation in hate group activities, or public expressions of hate, as those terms are defined. The bill would provide that certain findings would disqualify a person from employment.
 - Requires an agency to investigate, as specified, any internal complaint or complaint made by the public that alleges, as specified, that a peace officer engaged in membership in a hate group, participation in hate group activities, or public expressions of hate. The bill would provide that certain findings would be grounds for termination. This bill would also require the Department of Justice to adopt and promulgate guidelines for the investigation and adjudication of these complaints by local agencies.
 - This bill would exempt from confidentiality the record of any sustained complaint that a peace officer has engaged in membership in a hate group, participation in hate group activities, or public expressions of hate.
- Decertification SB 2: (Bradford) This bill would state the intent of the Legislature to enact legislation amending the Tom Bane Civil Rights Act and to provide a decertification process for peace officers.
- Investigations of Misconduct AB 718: (Cunningham) This bill would require a law enforcement agency or oversight agency to complete its investigation into an allegation of the use of force resulting in death or great bodily injury, sexual assault, discharge of a firearm, or dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer or custodial officer, despite the peace officer's or custodial officer's voluntary separation from the employing agency.
 - The bill would require the investigation to result in a finding that the allegation is either sustained, not sustained, unfounded, or exonerated, as defined.
 - The bill would also require an agency other than an officer's employing agency that conducts an investigation of these allegations to disclose its findings with the employing agency no later than the conclusion of the investigation. By imposing additional duties on local law enforcement agencies, the bill would impose a state-mandated local program.
- Release of Records Relating to Sustained Findings of Misconduct SB 16: (Skinner) This bill would, commencing July 1, 2022, make every incident involving use of force to make a member of the public comply with an officer, force that is unreasonable, or excessive force subject to disclosure. The bill would, commencing July 1, 2022, require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The

bill would, commencing July 1, 2022, also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes.

- The bill would require the retention of all complaints and related reports or findings currently in the possession of a department or agency. The bill would require that records relating to an incident in which an officer resigned before an investigation is completed to also be subject to release. For purposes of releasing records, the bill would prohibit assertion of the attorney-client privilege to limit the disclosure of factual information provided by the public entity to its attorney, factual information discovered by any investigation done by the public entity's attorney, or billing records related to the work done by the attorney.
 - The bill would require records subject to disclosure to be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except as specified. The bill would impose a civil fine not to exceed \$1,000 per day for each day beyond 30 days that records subject to disclosure are not disclosed. The bill would entitle a member of the public who successfully files suit for the release of records to twice the party's reasonable costs and attorney's fees.
 - This bill would expand the authorization to delay the release of records during an investigation to include records of incidents involving sexual assault and dishonesty by officers, and the records of incidents involving prejudice or discrimination, wrongful arrests, and wrongful searches that are required to be made public by this bill.
 - This bill would require each department or agency to request and review that file prior to hiring a peace officer. The bill would also require every person employed as a peace officer to immediately report all uses of force by the officer to the officer's department or agency. By imposing additional duties on local law enforcement, the bill would impose a state-mandated local program.
- Settlements and Judgments Annual Reporting Requirements AB 603: (McCarty) would require municipalities, as defined, to annually post on their internet websites specified information relating to settlements and judgments resulting from allegations of improper police conduct, including, among other information, amounts paid, broken down by individual settlement and judgment, information on bonds used to finance use of force settlement and judgment payments, and premiums paid for insurance against settlements or judgments resulting from allegations of improper police conduct. The bill would require the Transportation Agency to annually post the same information on its internet website regarding settlements and judgments against the Department of the California Highway Patrol. By increasing requirements for local governments, this bill would impose a state-mandated local program.

Hiring and Recruitment:

- Certification, Education, and Recruitment SB 387: (Portantino) This bill would require the commission to work with stakeholders from law enforcement, the University of California,

the California State University, the California Community Colleges, and community organizations to develop a list of courses to include as requirements for obtaining a basic certificate, as specified.

- The bill would require an applicant for a basic certificate to complete those courses before obtaining the certificate. By imposing additional training costs on local law enforcement agencies, this bill would impose a state-mandated local program.
 - The bill would also establish the Statewide Law Enforcement Education Fund, and make moneys in the fund available, upon appropriation by the Legislature, for providing financial support towards a higher education degree for individuals that commit to pursuing a law enforcement career. The bill would require the commission to establish statewide recruitment teams for purposes of actively recruiting elementary and secondary school pupils to pursue careers in law enforcement and performing education and outreach within schools.
- Certification of Peace Officers AB 60: (Salas) This bill would disqualify a person from being employed as a peace officer if that person has been convicted of, or has been adjudicated by a military tribunal as having committed an offense that would have been a felony if committed in this state. The bill would also disqualify any person who has been certified as a peace officer by the Commission on Peace Officer Standards and Training and has had that certification revoked by the commission.
 - This bill would require the commission to create a certification program for specified peace officers. The bill would create the Peace Officer Standards Accountability Advisory Board with 10 members to be appointed as specified. The bill would require the board to review reports of serious misconduct by peace officers, as specified, and to make a recommendation to the commission. The bill would require the commission to adopt the recommendation of the board if supported by clear and convincing evidence and, if action is to be taken against an officer's certification, to commence formal proceedings consistent with the Administrative Procedure Act.
 - The bill would make all records related to the revocation of a peace officer's certification public.
 - The bill would require an agency employing peace officers to report to the commission the termination or separation from employment of a peace officer with any complaint, charge, allegation, or investigation into the serious misconduct of a peace officer, to complete the investigation into any such misconduct, and to report the results of the investigation and resulting administrative action to the commission.
- County Sheriffs Eligibility Requirements.SB 271: (Wiener) This bill would repeal the following eligibility provisions, and would make other conforming changes. Existing statutory law specifies that a person is not eligible to become a candidate for the office of sheriff in a county unless the person has an advanced certificate issued by the Commission on Peace Officer Standards and Training or meets a combination of certain educational degree and full-time, salaried law enforcement experience requirements, as specified.
- Disqualification from Employment Peace Officers AB 17: (Cooper) This bill would disqualify a person from being a peace officer if the person has been discharged from the military for committing an offense that would have been a felony if committed in California

or if the person has been certified as a peace officer and has had that certification revoked by the Commission on Peace Officer Standards and Training.

- This bill would grant the commission the authority to investigate and determine the fitness of a person to serve as a peace officer in the state and to audit any law enforcement agency that employs peace officers without cause and at any time. The bill would authorize the commission to suspend, revoke, or cancel a certificate issued to a peace officer because the person is ineligible to be a peace officer or because the person has been subject to a sustained termination for serious misconduct, as defined, on or after January 1, 2022. The bill would make each law enforcement agency responsible for investigation, findings, and actions by the agency on allegations of serious misconduct and would give the commission access to the agency files. The bill would require the commission to be notified of and to review a peace officer's file after 3 allegations of serious misconduct within 5 years.
 - The bill would establish the Peace Officer Standards Accountability Advisory Board, as specified, to make recommendations on the decertification of peace officers to the commission.
 - The bill would require every law enforcement agency to notify the commission when a peace officer employed by that agency separates from employment. When a peace officer resigns or retires with a pending complaint, charge, or investigation of serious misconduct, the bill would require the law enforcement agency to complete the investigation into the serious misconduct within 90 days and report to the commission whether the complaint of serious misconduct was sustained, not sustained, unfounded, frivolous, or exonerated. The bill would require the commission to refer the files of peace officers whose termination for serious misconduct was sustained to the board to make a recommendation regarding the status of the officer's certificate and would require the commission to accept that recommendation or set forth the analysis and reasons for reaching a different result in writing.
- Increase Minimum Age Qualifications of Peace Officers SB 89: (Jones-Sawyer) This bill would increase the minimum qualifying age from 18 to 25 years of age. This bill would permit an individual under 25 years of age to qualify for employment as a peace officer if the individual has a bachelor's or advanced degree from an accredited college or university. The bill would specify that these requirements do not apply to individuals 18 to 24 years of age who are already employed as a peace officer as of the effective date of this act.

Use of Force and Police Tactics:

- Kinetic Energy Projectiles and Chemical Agents AB 48: (Gonzalez) This bill would prohibit the use of kinetic energy projectiles or chemical agents, as defined, by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive.
 - The bill would prohibit the use of chloroacetophenone tear gas or 2-chlorobenzalmalonitrile gas by law enforcement agencies to disperse any assembly, protest, or demonstration. The bill would include in the standards for the use of

- kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer. The bill would make these provisions inapplicable within a state prison facility.
- This bill would require these reports to be made monthly. The bill would also require each law enforcement agency, beginning on January 1, 2023, to report any incident in which a kinetic energy projectile or chemical agent is used against a person resulting in a reported injury. The bill would require those agencies, commencing on March 31, 2024, to annually publish a report on their use of kinetic energy projectiles and chemical agents. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.
 - Media Access at Protests SB 98: (McGuire) This bill would, if peace officers close the immediate area surrounding any emergency field command post or establish any other command post, police line, or rolling closure at a demonstration, march, protest, or rally where individuals are engaged primarily in constitutionally protected activity, as described, require that a duly authorized representative of any news service, online news service, newspaper, or radio or television station or network, as described, be allowed to enter those closed areas and would prohibit a peace officer or other law enforcement officer from intentionally assaulting, interfering with, or obstructing a duly authorized representative who is gathering, receiving, or processing information for communication to the public. The bill would also prohibit a duly authorized representative who is in a closed area from being cited for the failure to disperse, a violation of a curfew, or a violation of other, specified law. The bill would require that if a representative is detained by a peace officer or other law enforcement officer, the representative be permitted to contact a supervisory officer immediately for the purpose of challenging the detention.

Criminal Justice Reform:

- Felony Murder Rule SB 300: (Cortese) This bill would repeal the aforementioned provision requiring punishment by death or imprisonment for life without the possibility of parole for a person convicted of murder in the first degree who is not the actual killer, but acted with reckless indifference for human life as a major participant in certain specified violent felonies. The bill would also provide a procedure for incarcerated inmates previously convicted under that provision and awaiting execution or serving a sentence of imprisonment for life without the possibility of parole to petition the court to recall the sentence and resentence the inmate. This bill would repeal the provision prohibiting a judge from striking a special circumstance.
- Petty Theft SB 82: (Skinner) This bill would define the crime of petty theft in the first degree as taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury. The bill would specifically exclude from the crime of petty theft in the first degree acting in concert with one or more persons to steal merchandise from one or more merchant's premises or

online marketplace with the intent to sell, exchange, or return the merchandise for value. The bill would define the crime of petty theft in the 2nd degree as all other petty theft. The bill would impose a penalty of imprisonment in county jail for up to one year, a \$1,000 fine, or both, for petty theft in the first degree and would prohibit an act of petty theft from being charged as robbery or burglary. By creating a new crime, this bill would impose a state-mandated local program.

- Racial Justices (FOR ALL) AB 256: (Karla) This bill would authorize that petition to be filed for cases in which a judgment was entered prior to January 1, 2021. The bill would additionally make other technical changes. Existing law prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin, as specified, and, in a case in which judgment has not been entered prior to January 1, 2021, allows a petition to be filed alleging a violation of that prohibition. Existing law authorizes a court that finds a violation of that prohibition to impose specified remedies, including, among other things, modifying the judgment and resentencing the defendant.
- Sentencing Enhancements AB 1506: (Lee)
 - Existing law imposes various sentence enhancements, consisting of additional and consecutive terms of imprisonment, including, among others, enhancements for being armed with a firearm during the commission of a felony, being armed with a firearm during the commission of a street gang crime, as defined, being armed with ammunition designed to penetrate armor during the commission of a felony, furnishing a firearm to another for the purpose of aiding, abetting, or enabling that person to commit a felony, using a firearm during the commission of a felony, and the infliction of great bodily injury on any other person during the commission of a felony. This bill would repeal those enhancements and make conforming changes.
 - Existing law imposes a sentence enhancement in the state prison of 10 years for personally using a firearm in the commission of specified felonies, 20 years for personally and intentionally discharging a firearm in the commission of those felonies, and 25 years to life for personally and intentionally discharging a firearm and causing great bodily injury or death to any other person during the commission of those felonies. This bill would reduce those enhancements to 1, 2, and 3 years, respectively.
 - Existing law imposes a sentence enhancement of 5, 6, or 10 years in the state prison for, with intent to inflict great bodily injury or death, discharging a firearm from a motor vehicle in the commission of a felony and inflicting great bodily injury or death in the commission of a felony. This bill would reduce that enhancement to 1, 2, or 3 years in the state prison.
 - This bill would additionally authorize a person serving a term for those provisions as they read on or before December 31, 2021, to petition the court for a recall of sentence and to request resentencing in accordance with these changes.
- Sentencing: Dismissal of Enhancements SB 81: (Skinner) Existing law generally authorizes a court to dismiss an action or to strike or dismiss an enhancement in the furtherance of justice. This bill would, with exceptions, require a court to dismiss an enhancement in specified circumstances unless overcome by clear and convincing evidence that dismissal of the

enhancement would endanger public safety. The court shall dismiss an enhancement upon finding any of the following circumstances to be true:

- Application of the enhancement would result in a disparate racial impact.
- Multiple enhancements are alleged in a single case or the total sentence is over 20 years.
- The current offense is connected to mental health issues.
- The current offense is connected to prior victimization or childhood trauma.
- The current offense is nonviolent.
- The defendant was a juvenile when they committed the current offense or prior offenses.
- The enhancement is based on a prior conviction that is over five years old.
- Though a firearm was used in the current offense, it was inoperable or unloaded.

Mental Health and Crisis Response:

- Mobile Crisis Support Teams and 988 Crisis Hotline AB 256: (Bauer-Kahan) This bill would establish the 988 Crisis Hotline Center, using the digits “988” in compliance with existing federal law and standards governing the National Suicide Prevention Lifeline. The bill requires the Office of Emergency Services to implement the hotline system, including hiring a director. The bill would require the office to adopt emergency regulations implementing these provisions by July 16, 2022. Beginning January 1, 2023, and not later than January 1, 2024, the bill would require crisis hotline centers, counties, and other relevant entities to become fully compliant with the regulations.
 - **The bill would require counties to provide and make crisis services, including mobile crisis teams and crisis receiving and stabilization services, available to 988 callers and would require counties to coordinate with 988 crisis hotline centers on the deployment of, and access to, these services.**
 - This bill would specify reporting requirements, including a requirement, beginning January 1, 2025, and annually thereafter, for the office to prepare a report containing specified information, and deliver it to the Legislature, the Substance Abuse and Mental Health Services Administration, and the Federal Communications Commission.
 - Crisis hotline centers would be required to provide data, and reports, and participate in evaluations and related quality improvement activities as required by the office.
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B. Pending Federal Police Reform Bills:

- Justice in Policing
- CAHOOTS Act
- Community-Based Response Act