Select Committee on Police Reform

Chair's Interim Report on 2020 Informational Hearings

February 2021

Mike A. Gipson (D-Carson), Chair

Introduction

The relationship between law enforcement and those they police has been historically contentious. Many communities simply do not trust police. Only a third of the general population believes that law enforcement departments are effective and fair in holding officers accountable for misconduct.[1]

Beyond mere distrust, the disproportionate and heightened exposure to criminalization of people of color has made geography and/or demographic a determinant of justice. For example, people of color are much more likely to be arrested for drugs, even though they are not more likely to use or sell them.[2] Further, in their interactions with police, young black males are 21 times more likely to be shot and 2.5 times more likely to be killed by an officer over their white counterparts.[3] The public has often responded with unrest toward a system that they believe to be intensifying the oppression of their communities.

One of the most important ways to build trust between law enforcement and communities is to ensure justice, transparency and accountability. Those who took an oath of office to uphold the Constitution of the United States and the State of California must assure that their community presence, through action, comes with an honorable intent to provide security to all community members.

The Assembly Select Committee on Police Reform has held a series of hearings to closely examine California's public safety practices and set forth a forward-looking framework for what our communities need from their law enforcement agencies. The testimony outlined here regards law enforcement hiring practices and training standards, as well as options for increasing accountability of agencies and officers to reduce public safety risks. The Committee garnered input from a variety of stakeholders, including community advocates, law enforcement, academics, subject matter experts, and legal scholars. This Interim Report serves as a building block in creating a new vision of law enforcement with the goal of prioritizing the safety of all members of the public.

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[1] https://cdn.americanprogress.org/wp-content/uploads/2016/08/31134647/PoliceCommunity-brief.pdf
[2] https://www.washingtonpost.com/news/wonk/wp/2014/09/30/white-people-are-more-likely-to-deal-drugs-but-black-people-are-more-likely-to-get-arrested-for-it/
[3] https://www.rutgers.edu/news/police-use-fatal-force-identified-leading-cause-death-young-men

Summary of Issues

The panel testimony across the three hearings largely addressed the following key issues: (1) the philosophical aims of community-oriented policing; (2) how to recruit and train a more professional and diverse police force; (3) closing the "under investigation" loophole that allows officers to resign mid-investigation and still be rehired in other departments; (4) the need for a decertification process for problem officers; (5) expanding civil lawsuits under the Bane Act against police who caused death or serious bodily injury (as well as limiting police immunity); (6) developing formal mechanisms for community oversight; and (7) a review of officer due process rights, and existing administrative procedures for complaints, adjudication, and discipline.

Reforming the mechanisms of community oversight of police was a consistent theme for community stakeholders, plaintiffs' attorneys, and legal experts. Several witnesses recommended changes matching last year's proposed update to the Tom Bane Civil Rights Act (*See*, SB 731, 2020, died in Assembly on third reading). SB 731 would have created a police decertification procedure with civilian involvement, and also would have (1) revised the intent requirement for officers' violation of a citizen's rights to "general" rather than "specific" intent; (2) limited state law immunities for officers; and (3) allowed civil lawsuits for wrongful death or serious bodily injury under the Act. Some witnesses also discussed a possible statewide mandate for body-worn cameras, and potential limits on police officer speech advocating violence or racism, especially in light of social media. Additionally, one panelist introduced a novel concept of police carrying individual liability insurance to promote less aggressive policing by means of individual price sensitivity, rather than a traditional government indemnification approach.

In contrast, police groups and defense attorneys listed out a variety of procedures that officers must already comply with regarding complaints, investigations, and adjudications. They also noted that the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution, and the Public Safety Officers Procedural Bill of Rights Act, draw a line at the outer limit of what is acceptable in limiting officer rights under the law. Officer groups and attorneys also specified that disciplinary proceedings have been commonplace over the years, and feel they have been largely successful in rooting out "bad apples." Furthermore, they mentioned a list of reforms already chaptered into law over the last number of years, including the following: limiting the use of deadly force (AB 392, 2019); emphasizing de-escalation techniques (SB 230, 2019); eliminating carotid choke-holds (AB 1196, 2020); and requiring Attorney General investigations for office-involved shootings of unarmed individuals resulting in death (AB 1506, 2020). These groups also expressed concern against a chilling effect for officers on the job as they work to adopt and train to new standards, and the need for funding to train officers to higher levels of expertise as to use-of-force and other perishable skill-sets.

Interim Summary: Informational Hearing #1

Date: October 14, 2020
Subject: "A Path Forward: Learning from the History of Police Reform"

The Assembly Select Committee on Police Reform held its first informational hearing on October 14, 2020. Panelists shared perspectives from academia, law enforcement, the legal field, and the community.

Hearing Summary:

This first hearing proceeded with remarks from Assemblymembers Mike A. Gipson (Chair), Chad Mayes (Vice Chair), Blanca E. Rubio, Rebecca Bauer-Kahan, Lorena Gonzalez, Dr. Shirley Weber, Eloise Gomez Reyes, Rob Bonta, and Tom Lackey.

- The need for continued conversation around issues of police reform are necessary to improve trust between California's communities and law enforcement.

This hearing's purpose was to increase understanding of the historical movement around police reform in California. Committee members asked panelists about the following issues:

- Community-Based Policing
- Building Trust Between Law Enforcement and the Community It Serves
- Previous Legislative Efforts on Police Reform
- Police Officer Discipline
- Justice System Improvements

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Topic: History of police reform in California

Presenters: **Dr. Peter Hanink**, Professor of Sociology, Cal Poly Pomona;
Arif Alikhan, Former LA Dep. Mayor; Dir. LAPD Constitutional Policing/Policy
Eric Nuñez, President, California Police Chiefs Association (CPCA)
Ryan Harrison, Sr., California Association of Black Lawyers (CABL)
Gabby Trejo, Executive Director, Sacramento ACT

Notes:

- The history of law enforcement reform in California tends to be demarcated by similar patterns.
    - Law enforcement reform is typically pursued after a public crisis event, when there are calls for reform by the public. Reforms may then be implemented and public crisis is calmed, then another excessive use-of-force crisis event occurs.
- Understanding the history of police reform efforts in California is crucial to establishing reforms that do not continue the same cycle.
- Trust in professional judgment of police officers to properly enforce laws fluctuates within these cycles of crises.
- Community policing is required to rebuild trust between law enforcement and the communities they are policing.
    - Community policing often consists of law enforcement departments reaching out to community members and holding continued discussion about what law enforcement services are required for that community.
    - Recent concerns around community policing have argued that law enforcement leadership is not genuinely interested in partnerships to rebuild trust and often use meetings with the community as opportunities for intelligence gathering.
- Lack of law enforcement transparency in departmental reforms risks eroding trust and the perception of legitimacy among California communities.
- Increased data collection of policing activities is required to improve and pinpoint further reform efforts in the future.
    - Security around data collection is required to ensure data is properly captured.

- Increasing professional and educational standards in policing statewide is necessary to ensure the establishment of trust between law enforcement and California communities.
    - Law enforcement officers with higher education credentials tend to be involved in fewer excessive use-of-force incidents.
- Academy training differs from state jurisdiction to jurisdiction.
    - California law enforcement is mandated 4-6 months of training in order to be certified by the Peace Officers Standards and Training Commission (POST).
    - Police officers should be required to undergo training in mental health, homelessness assistance and emotional intelligence.
    - Departmental incentives for higher education differ from jurisdiction to jurisdiction, creating a lack of uniformity of standards in training across California.
- Community policing should be more widely implemented throughout California.
    - Specificity of local community needs must be included within officer training programs.
- Reform efforts should consider a decertification process for law enforcement.
    - Decertification processes must consider due process protections for law enforcement.
    - Decertification must prevent officers that have committed misconduct from moving to another jurisdiction and escaping internal investigations and accountability.
- Increasing public transparency by publishing departmental policies online assists in increasing public trust with law enforcement agencies.
- Hosting community events assists in increasing trust between law enforcement and community members.
- From a historical lens, law enforcement has been increasingly protected from disciplinary measures.
    - It is difficult for law enforcement leadership to hold individual officers accountable for misconduct.
- Police reform should focus on promoting the rule of law and confidence in California's judicial system.
- Incidents of police brutality and excessive use of force with a lack of accountability damages public trust toward law enforcement.
- Law enforcement must refrain from exacting judicial punishments and focus on proactively establishing a sense of trust with community members.
- Qualified immunity for law enforcement officers should be narrowed or eliminated
    - Qualified immunity allows police officers to escape accountability measures if officers are able to prove they believed a particular action they took in the line of duty was "reasonable."
- California must establish a centralized list, similar to the "Brady List," to track officers who commit misconduct from moving into another department without facing proper disciplinary actions.
- Police officer speech which advocates violating the constitutional rights of citizens by governmental force should be punishable by law.
- Conversations around reform efforts tend to occur only when there is another crisis in policing.
- Law enforcement should be prohibited from having any involvement/connection to hate groups.
    - Data collection regarding such affiliations is critical to oversight and accountability.

Interim Summary: Informational Hearing #2

Date: December 16, 2020
Subject: "Setting Better Standards for Police: More Professional, More Safety? Part 1"

The Assembly Select Committee on Police Reform held its second informational hearing on December 16, 2020. Panelists shared perspectives from academia, law enforcement, the legal field, and the community.

Hearing Summary:

The hearing proceeded with remarks from Assemblymembers Mike A. Gipson (Chair), Blanca E. Rubio, Eloise Gomez Reyes, and other committee members who highlighted the need for shared, open discussion regarding current professional standards in policing.

- The murder of George Floyd in May 2020 served as a public reminder of the realities faced by many Black Americans who disproportionately remain the targets of excessive use of force by law enforcement officers not only in California, but nationwide.
- Citizens have called on the Legislature to advance law enforcement reform efforts aimed at benefiting the trust between law enforcement and California's communities and reestablishing a standard of professionalism within law enforcement as perceived by the communities they serve.

The purpose of this hearing was to build understanding of the current professional training standards and recruitment practices for California law enforcement. Committee members asked panelists about the following issues:

- Law Enforcement Training – Current and Future Practices
- Law Enforcement Accountability
- Equity and Diversity in Law Enforcement Recruitment and Training

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Topic One: Overview of professional standards in policing—which areas of professionalism can be heightened statewide?

Presenters: **Dr. Ernest Uwazie**, Chair/Professor of Criminal Justice Department, Sac State
Tanya Faison, President, Black Lives Matter (BLM) Sacramento
Arif Alikhan, Former LA Deputy Mayor; Director, Los Angeles Police Department (LAPD) Constitutional Policing & Policy

Notes:

- In order to hold officers accountable for misconduct, they must have a clear understanding as to how they are expected to fulfill their job duties, and there must be a framework to assert this expectation in initial training academies.
- Heightened standards of professionalism must be uniformly mandated at the state level by increasing educational requirements and the amount of training required.
    - Police in California have to complete 662 hours of training mandated by the California Commission on Peace Officer Standards and Training (POST).
    - Training beyond the POST certification varies from departmental jurisdiction to jurisdiction, which may create inconsistencies in what the public expects of law enforcement.

- Data collection around training and development is required in order to improve policy around officer training and education.

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Topic Two: Recruitment of police officers.

Presenters: **Dr. Erroll Southers**, University of Southern California (USC)
Daniel Hahn, Chief, Sacramento Police Department (SPD)
Greg Yee, Deputy Chief, Administration Bureau, SF Police Department (SFPD)

Notes:

- Low rates of racial, ethnic, and gender diversity among applicants constrain law enforcement recruitment programs.
  - Demographics of law enforcement in California[4]
    - Gender 86% Male, 14% Female
    - .33% Native American, 6% Asian, 6% black, 1% Filipino, 32% Hispanic, .37 Pacific Islander, 2% Other, 52% White.
- Law enforcement recruitment programs experience difficulty in attracting candidates with college-level education credentials.
  - Partnerships among community colleges, public universities, and law enforcement aim at attracting officers with higher-education credentials.

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Topic Three: Police training—what are the current expectations for law enforcement training, and what areas need improvement?

Presenters: **Manny Alvarez,** Executive Director, CA Commission on Peace Officer Standards and Training (POST);
Jamila Land, Founder, Anti-Violence Safety and Accountability Project;
Hannu Tarjamo, Director, Los Angeles Police Protective League (LAPPL)

- Training remains insufficient both in the curriculum and time required to prepare officers for the diverse demands of policing.
- Higher uniform training standards must be established at the state level to ensure local departmental compliance.
  - Officers receive their Basic Certificate through the Peace Officer Standards and Training Commission (POST).
  - POST requires 662 hours of Regular Basic Course (RBC) officer training.
  - Officer training beyond the RBC's mandated 662 hours varies from departmental jurisdiction to jurisdiction.
- "Effective" officer training depends upon modernizing curricular expectations in order to meet the demands of community policing in California communities today.
  - Officers spend about 2-3% of their time deciding whether or not to exercise deadly force, yet the majority of training hours are focused on this area.
  - Training should focus on community policing engagement, establishing social capital among residents, and de-escalation techniques.
- Training must be extended for existing personnel through periodic assessments of each officer's performance.

[4] Data from POST.

- Trainers require timely notification of changes made to training standards in order to implement adjustments for new recruits. Such changes may include implicit bias or use-of-force training.

Interim Summary: Informational Hearing #3

Date: December 18, 2020
Subject: "Discipline for Misconduct: Why is it so hard to hold police accountable? Part 2"

The Assembly Select Committee on Police Reform held its third information hearing on December 18, 2020, in Sacramento, California. Panelists shared perspectives from academia, law enforcement, the legal field, and the community.

Hearing Summary:

The Chair offered opening remarks, expressing that continued conversation among community members, law enforcement experts, and leadership is required, to ensure that trust between law enforcement and California communities is maintained.

Committee members asked panelists about the following issues:

- Police Officer Disciplinary Process
- Need for Disciplinary Process Improvements
- Arbitration and Court Litigation Process Arising Out of Alleged Misconduct

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Topic One: Police discipline—what does police discipline look like and where is there room for improvement?

Presenters: **Brian Marvel**, President, Peace Officers Research Association of California (PORAC);
Eric Nuñez, President, CA Police Chiefs Association (CPCA);
Paul Henderson, Esq., Executive Director at Police Accountability (DPA) at San Francisco PD;
Lt. Diane Goldstein (Ret.), Current Board Chair and Incoming Executive Director at Law Enforcement Action Partnership (LEAP)

Notes:

- The lack of a decertification process in California discourages accountability measures beyond internal review and disciplinary action.
    - Once internal review commences, officers can simply terminate their employment before that review concludes and may be rehired at another agency with, in some cases, a clean record, thereby avoiding accountability.
- The Legislature should establish an effective, robust decertification process.
- There was disagreement among the panelists as to which public entity should retain responsibility over the review of officer misconduct and the prescription of appropriate disciplinary actions.
    - Panelists argued POST should remain responsible for disciplinary review, proceedings, and determination of appropriate discipline.

    - Alternatively, panelists argued that this process should be housed within the California Department of Justice.
    - "Independent oversight" is needed.
    - Panelists also argued that independent oversight agencies must be simultaneously tasked in assisting law enforcement leadership with internal disciplinary investigations through:
        - The ongoing tracking of officer misconduct through increased data collection, analysis, and sharing between law enforcement departments and public oversight bodies.
        - California law enforcement departments are currently not required to publicly record or report use-of-force incidents or other potentially significant findings from internal investigations – this prohibition undermines transparency, and therefore, public trust.
- The increase of public transparency within disciplinary processes remains a fundamental requirement to rebuild trust between law enforcement and California's communities.
    - Panelists argued that the Peace Officer Bill of Rights (POBR) protects officers from having private information widely shared among public agencies. Attempts to increase transparency measures would require amending these POBR rules.
    - Panelists argued that the Legislature must mandate statewide standards defining data collection, transparency, and analysis in regard to internal disciplinary actions taken to remedy officer misconduct.
    - Data, analysis, and findings collected from internal investigations can be used to more accurately target police reform needs in the future.
- Panelists argued that the jurisdiction of civilian accountability commissions should be expanded. (There are over 18,000 law enforcement agencies in the nation, and a little over 200 community oversight commissions.)
- The proliferation of body worn cameras by law enforcement must continue across the state of California and that state law should mandate body worn cameras, and when they should be turned on, with civil and/or criminal penalties associated with any violation of these rules.

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Topic Two: Police Officer Accountability in Civil Litigation

Presenters: **Erwin Chemerinsky**, Dean, UC Berkeley Law School;
David E. Mastagni, Partner at Mastagni Holstedt, APC
James R. Touchstone, Partner at Jones and Mayer; Legal Counsel, California Police Chiefs Association
Geoffrey S. Sheldon, Partner and Chair of Public Safety Practice Group at Liebert Cassidy Whitmore
Adante Pointer, Civil Rights Attorney – Partner at Pointer & Buelna, LLP
Deborah Ramirez, Law Professor at Northwestern University

Notes:

- The Legislature should address the issue of excessive use-of-force. Notwithstanding the continued application of absolute and qualified immunity at the federal level (*see* 42 U.S.C. § 1983), California needs the following reforms in state law under the Tom Bane Civil Rights Act: (1) a police decertification procedure (CA is one of only five states in U.S. with no procedure); (2) revise the intent requirement for officers' violation of a right

to "general" rather than "specific" intent (to supersede CA caselaw); (3) revise the Act to limit state law immunities; and (4) allow claims for wrongful death under the Act.

- California Penal Code mandates that every law enforcement agency in California establish and publicize its process for accepting civilian complaints and subsequent evaluation of claims.
- Panelists discussed the impact of the Peace Officer Bill of Rights (POBR) on efforts to hold officers accountable for misconduct, particularly in court.
    - Panelists disagreed on the impacts of POBR and its role in disciplinary and accountability processes.
        - Panelists argued that the following POBR provisions significantly diminish the ability of law enforcement leadership to hold officers accountable when they commit misconduct in the line of duty.
            - Setting a statute of limitations for internal disciplinary investigations at 365 days is an improper expectation and undermines public trust as investigations may often take longer than just one year.
            - Limiting investigatory information that may be shared with civilian oversight agencies, public defenders – both at state and federal levels – and the public, prohibits necessary communication to foster accountability.
            - Allowing officers under investigation to review all investigatory materials if their investigation lasts over 80 days undermines investigation integrity and allows the investigated officer to learn what the investigator knows.
        - Conversely, panelists argued that POBR also ensures due process protections for police officers throughout California.
            - POBR allows officers to appeal disciplinary decisions above anything over a written reprimand by a superior.
- Panelists proposed that requiring officers to carry personal liability insurance would establish a greater sense of accountability and diminish excessive use of force incidents.
    - Creating an insurance market for individual officers could establish a framework for early intervention efforts outside of formal disciplinary proceedings that could help an officer with, for example, issues related to Post Traumatic Stress Disorder (PTSD) and/or a substance abuse.
    - Panelists suggested that police departments would be responsible for paying officer insurance premiums.
    - Misconduct committed by an officer would result in higher insurance premiums to be paid out of pocket by the officer in question.
    - Law enforcement officers would be capped at $25,000 of out-of-pocket expenses and could be potentially priced out of the market due to continued misconduct.
- Panelists disagreed as to what the impacts of mandated personal liability insurance would have on individual police officers and their municipalities.
    - Panelists argued that a requirement of personal liability insurance would create a separate class of California state employee exempt from typical bargaining procedures afforded to other state employees.
    - Panelists argued personal liability insurance requirements would price lower-income officers "out" of their profession as they would be unable to afford insurance fees.
    - Panelists argued that an insurance risk assessment process would be unsuitable for officers who might regular face higher risk circumstances, like Special Weapons and Tactics (SWAT) team officers.