

CHANGES AND IMPACTS OF POLICE REFORM IN THE WAKE OF GEORGE FLOYD: CALIFORNIA LEGISLATIVE RESPONSE THURSDAY, NOVEMBER 17, 2022

PRESENTED BY
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2022 NEW POLICE LEGISLATION

- SB 2. Decertification and Changes to the Bane Act
- SB 16. Expansion of Records Subject to Disclosure
- SB 98. Media Access to Closed Areas
- AB 26. Duty to Intercede, Consequences, and Reporting
- AB 48. Crowd management, Kinetic Energy Projectiles
- AB 89. New Policing Degree Program and Minimum Age
- AB 481. Military Equipment: Funding, Acquisition, and Use
- AB 490. Positional Asphyxia
- AB 958. Law Enforcement Gangs
- AB 1475. Limits on Sharing Booking Photos on Social Media

AB 26

DUTY TO INTERCEDE, CONSEQUENCES, AND REPORTING REQUIREMENTS

- Amends Government Code Section 7286 and places duty on other officers to intercede:
 - Efforts to deescalate offending officer's excessive use of force.
 - Confronting offending officer during use of force.
 - Physically stopping excessive use of force.
 - Recording excessive force, if equipped with body-worn camera.
 - Documenting efforts to intervene.
 - If officer continues, reporting to dispatch or watch commander on duty and stating offending officer's name, unit, location, time, and situation.

AB 26

(CONTINUED)

- Requires officers to 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” [emphasis added].
- Law enforcement agencies must now have policies that include a requirement that officers immediately report potential excessive force.

AB 26

(CONTINUED)

- New law prohibits retaliation against officers who report suspected violations of law or regulations to a supervisor or a law enforcement agency with authority to investigate the violation.
- “Retaliation” means demotion, failure to promote to a higher position when warranted by merit; denial of training and professional development opportunities; denial to resources necessary for an officer to perform their duties; intimidation; harassment; or threat of injury.

AB 26

(CONTINUED)

CONSEQUENCES

- Section 7286 as amended requires that an officer who fails to intercede and has had training in the duty to intercede, be disciplined up to and including the same level of discipline as the officer who used substantiated excessive force.
- Officers who violate this section are prohibited from training other officers for 3 years following a substantiated use of excessive force.

SB 2: DECERTIFICATION AND CHANGES TO THE BANE ACT

- Significantly impacts law enforcement in State of California :
 1. POST Commission now has authority to revoke peace officer certifications.
 2. Expands grounds for decertification of an officer. Law enforcement agencies must now investigate complaints of serious misconduct even if subject officer is no longer employed by the agency.
 3. Abolishes certain state statutory immunities that had previously limited liability under the Bane Act, the state version of federal Section 1983 litigation.

SB 2

(CONTINUED)

Decertification

- POST may now revoke a certificate when an officer has been terminated for cause, found to have committed acts of “serious misconduct” or the officer is deemed ineligible under the newly amended Government Code Section 1029 (felony convictions, convictions for dishonesty, bribery, military discharge for an act that would have been deemed a felony, etc.)

SB 2

(CONTINUED)

Decertification - Continued

- SB 2 does not define “serious misconduct.”
 - POST is required to promulgate regulations, regarding such
- SB 2 provides that at a minimum “serious misconduct” means for the purposes of decertification the following:
 1. Dishonesty related to reporting, investigation, prosecution of a crime; including tampering with body worn camera footage for the purposes of concealing misconduct;
 2. Abuse of power, including intimidating a witness, procuring a false confession, making a false statement;

SB 2

(CONTINUED)

Decertification - Continued

4. Physical abuse, including excessive or unreasonable force;
5. Sexual assault;
6. Demonstrating bias based on race, national origin, religion, gender, etc.
7. Acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public, as determined by POST;

SB 2

(CONTINUED)

Decertification - Continued

9. Participation in a law enforcement “Gang”
10. Failure to cooperate with an investigation of potential police misconduct; and,
11. Failure to intercede when seeing another officer use force that is clearly beyond what is necessary as determined by an objectively reasonable officer under the circumstances.

SB 2

(CONTINUED)

Decertification – Continued

- The new law creates the “Peace Officer Standards Accountability Division” (“Accountability Division”) and the “Peace Officers Standards Accountability Advisory Board” (“Advisory Board.”)
- The Governor must establish a “Peace Officers Standard Accountability Board” no later than January 1, 2023

SB 2 (CONTINUED)

Decertification – Continued

Accountability Division is charged with the following:

- Handle decertification investigations, prosecutions, and administrative proceedings;
- Review investigations by law enforcement agencies;
- Accept complaints from members of the public regarding officers or law enforcement agencies;

SB 2

(CONTINUED)

Decertification – Continued

- Make findings and recommendations to the POST Commission regarding suspension or revocation of an officer's certification; and,
- Notify the subject officer of the findings and allow the officer to request review of the findings

SB 2

(CONTINUED)

Decertification – Continued

The Advisory Board will have the authority to do the following:

- Hold public meetings to review the Accountability Division's investigation and make recommendations to the POST Commission.
- The POST Commission must then review the recommendations by the Advisory Board, and if the Commission determines that if action is to be taken to decertify an officer, the POST Commission then refers the matter to the Accountability Division to start formal proceedings.
 - The Commission must notify the employing agency and the DA
- The Advisory Board will consist of nine members serving three-year terms, all but two of whom are appointed by the Governor.

SB 2

(CONTINUED)

New Investigation and Record-Keeping Requirements

- Beginning on January 1, 2023, all law enforcement agencies must complete any investigation into allegations of “serious misconduct” by an officer regardless of the employment status of the officer.
- Records of “serious misconduct” investigations that are reported to POST must be maintained by the investigating law enforcement agency for at least two years after making the POST report.
- The agency must make these records available for inspection by POST on request.

SB 2

(CONTINUED)

New Background Check Requirements

- When an agency hires a lateral officer from another agency, the hiring agency is required to contact POST to inquire as to the facts and reasons the officer was separated from any previous employing agency.
- POST is required to respond with any relevant information in its possession.
- The effective date is not clear, but safe to assume January 1, 2022.

SB 2 (CONTINUED)

New Reporting Requirements for Law Enforcement Agencies

Beginning on January 1, 2023, SB 2 will require all law enforcement agencies to begin submitting reports to POST Requires reports within 10 days any time one of the following occurs:

- The agency employs, appoints, terminates, or separates from employment any peace officer, including involuntary terminations, resignations, and retirements.
- A complaint, charge, or allegation of conduct is made against a peace officer employed by the agency that could result in decertification.

SB 2

(CONTINUED)

New Reporting Requirements for Law Enforcement Agencies

- A civilian oversight entity or review board, civilian police commission, police chief, or civilian inspector general makes a finding or recommendation that a peace officer employed by the agency engaged in conduct that could result in decertification.
- The final disposition of an investigation determines that a peace officer engaged in conduct that could result in decertification, regardless of the discipline imposed (if any).

SB 2

(CONTINUED)

New Reporting Requirements for Law Enforcement Agencies

- A civil judgment or court finding is made against a peace officer based on conduct that could result in decertification, or a settlement is reached in civil case against an officer or the employing agency based on allegations of officer conduct that could result in decertification.
 - The trigger for reporting is if the allegation, if true, could subject an officer to decertification. Thus a report is required even if the complaint or civil claim is later proved untrue.
- Where an agency does make a report to POST in good faith, SB 2 provides immunity from civil liability for the disclosure.

SB 2

(CONTINUED)

Changes to The Bane Civil Rights Act

Eliminates state statutory immunities for police officers and employing agency for liability under the Bane Act:

- Govt Code Section 821.6 - immunity for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment
- Govt Code Section 844.6 - immunity for injuries to, or caused by, a prisoner
- Govt Code Section 845.6 - immunity for injuries caused by failure to obtain medical care for a prisoner in custody
- SB 2 does not eliminate federal qualified immunity defenses.

SB 2 (CONTINUED)

Changes to The Bane Civil Rights Act

- .Important to note that SB 2 also amends the Bane Act to require public entities to provide indemnification to employees or former employees sued under the Act, to the same extent that existing law requires in tort cases.

SB 16

EXPANSION OF CATEGORIES OF POLICE OFFICER RECORDS SUBJECT TO DISCLOSURE

- New law expands categories of police personnel records subject to disclosure in criminal and civil cases as well as through the Public Records Act.
- Amends Penal Code Section 832.5 by requiring records of not sustained complaints be kept for 5 years and records of sustained complaints be kept for 15 years.

SB 16

(CONTINUED)

- Amends Penal Code Section 832.5 to expand categories of records subject to public disclosure:
 1. Any record of a sustained finding involving a complaint that alleges unreasonable or excessive force.
 2. Any record of a sustained finding that an officer failed to intervene against another officer clearly using unreasonable or excessive force.
 3. Any record of a sustained finding that the officer made an unlawful arrest or conducted an unlawful search.

SB 16

(CONTINUED)

4. Any record of a sustained finding that an officer engaged in conduct, including verbal statements, writing, online posts, involving prejudice against a person based on race, religious creed, color, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

SB 16

(CONTINUED)

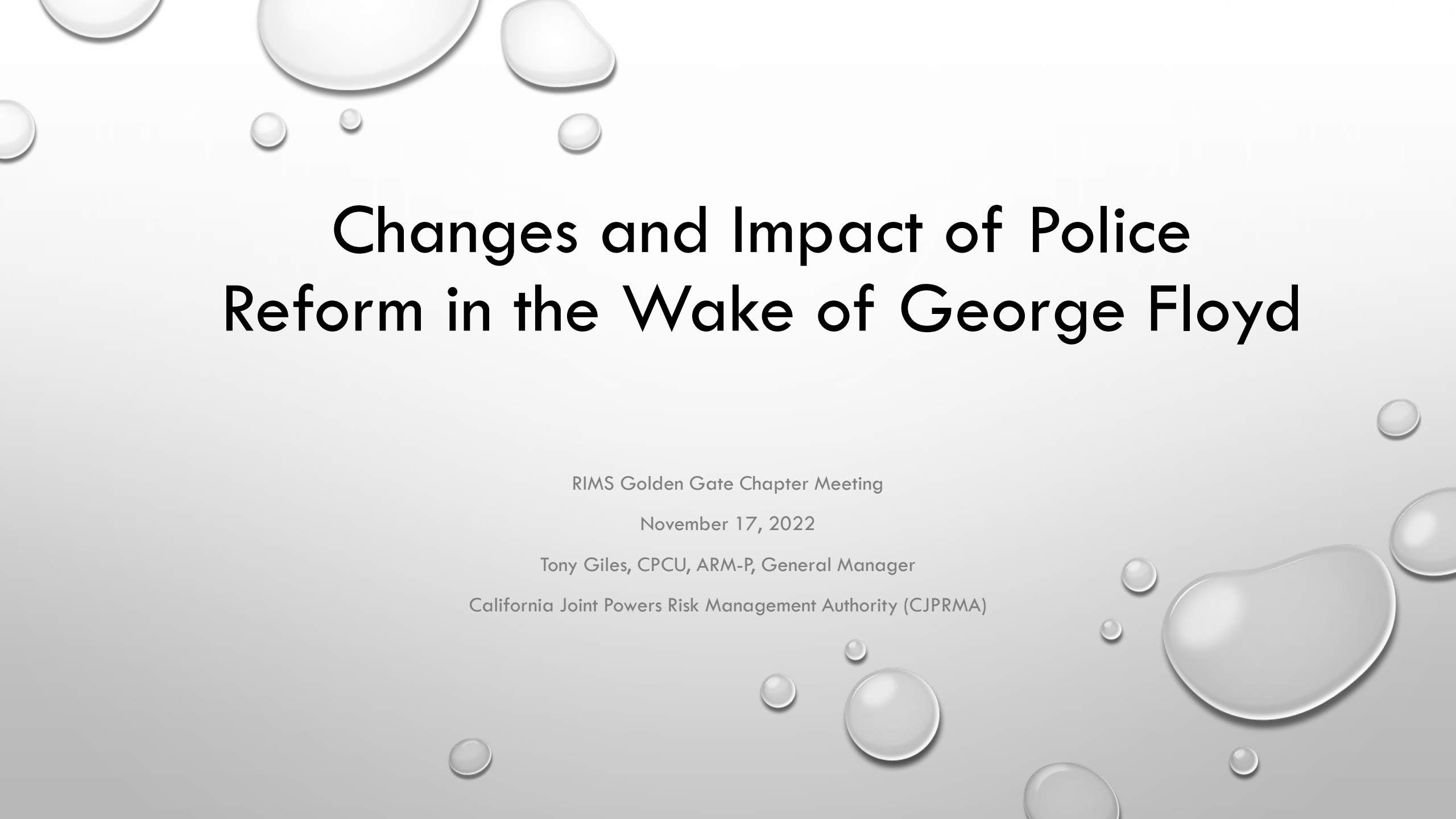
Additional Provisions of SB 16

- Adds Penal Code Section 832.13: “Every person employed as a peace officer shall immediately report all uses of force by the officer to the officer’s department or agency.”
- Requires agencies to obtain and review any documents related to a peace officer’s prior employment prior to employing a peace officer.
 - Agency shall request records pertaining to the categories of conduct subject to public disclosure.

QUESTIONS?

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The background of the slide is a light gray gradient. It is decorated with numerous realistic water droplets of various sizes. Some droplets are at the top left, some are along the bottom edge, and others are scattered on the right side. The droplets have highlights and shadows, giving them a three-dimensional appearance.

Changes and Impact of Police Reform in the Wake of George Floyd

RIMS Golden Gate Chapter Meeting

November 17, 2022

Tony Giles, CPCU, ARM-P, General Manager

California Joint Powers Risk Management Authority (CJPRMA)

The Environment for Police Liability

It's not just George Floyd.

- July 2014. Eric Garner. Selling cigarettes illegally in New York City.
- August 2014. Michael Brown. Ferguson, Missouri.
- November 2014. Tamir Rice. 12 year-old with toy gun in Cleveland, Ohio.
- April 2015. Walter Scott. Pulled over for defective light in north Charleston, South Carolina. Shot in back while running away.
- March 2018. Stephon Clark. Cell phone mistaken for gun in Sacramento, California.
- March 2020. Breonna Taylor. Shot during police raid of her apartment in Louisville, Kentucky.
- May 2020. George Floyd. Used counterfeit \$20 bill in Minneapolis, Minnesota.

The Environment for Police Liability

- Officers facing mental health issues on the street.
- Cameras everywhere.
- Angry members of the public.
- First Amendment audits.
- Challenges with “less lethal” response options.
- Staffing/Recruitment challenges.

Coverage for Police Liability

- Most cities in California participate in public entity risk pools for general liability coverage, including law enforcement liability.
- Primary and excess pools.
- Formed under the California Government Code as Joint Powers Authorities (JPAs).
- Most are reinsured in the commercial market.

CJPRMA

- Liability pool comprised of cities in Northern California.
- Most members have police departments.
- Police liability represents roughly 50% of our frequency and more than 50% of our payments for judgments/settlements.
- Erosion of immunities, including qualified immunity..
- Summary judgments are far less common. Judges are more likely to allow the plaintiff to have their day in court.

CJPRMA

- Public sentiment is no longer with police officers. Getting a defense verdict on a police case is much more difficult now.
- Judgments have increased greatly, which has pushed the value of settlements.
- Change in the environment has negatively impacted our net equity (think policyholder surplus).
- Increased member premiums and reinsurance costs.
- Police auto liability is a related problem and one of areas of high loss.

What Can Be Done?

- De-escalation.
- New modes of policing.
- Modern policies. Training to those policies
- Crisis Intervention Teams (CIT).
- Body Worn Cameras.
- Early claim resolution.
- Techniques to avoid nuclear verdicts.