

BOLO

Be On the Lookout

The Newsletter for the Los Angeles Airport Peace Officers Association



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Have Progressive Policies Led to Increased Crime?

In a news conference in January, LAPD Chief Michel Moore, Mayor Eric Garcetti and other city and LAPD representatives came together to deliver their annual report on crime statistics. In the city of Los Angeles last year, there were nearly 400 homicides — the most in a single year over the last 15 years. The department also reported that the city experienced an influx of gun violence, with 1,459 people shot, and that violent crime and property crime had increased 3.9% and 4.2%, respectively.

While sobering, the statistics are unsurprising. Throughout 2021, Los Angeles, San Francisco and other large cities across the state saw an extraordinary number of violent, brazen crimes, such as organized retail theft, follow-home robberies, auto theft, assaults and fatal shootings, that have left communities feeling vulnerable and fearful of what many have viewed as “out-of-control” crime plaguing their cities. In an effort to assuage his constituents’ concerns, Governor Gavin Newsom in December announced a public safety plan (tinyurl.com/2p8s3n98) to “aggressively fight and prevent crime in California” by supporting and strengthening local law enforcement and asking the State Legislature to spend more than \$350 million to support the effort.

Unfortunately, California isn’t alone in battling a relentless crime wave; it’s part of a disconcerting nationwide trend. Cities across the country have been seeing surges in violent crime since the beginning of the coronavirus pandemic. Many city officials and experts have attributed the rise to numerous factors, such as the pandemic itself, the economic downturn, the rise in “ghost guns,” lack of policing resources and more. But some are arguing that increased crime is an effect of the “defund the police” movement and progressive policies enacted over the years that have crippled law enforcement’s ability to protect their communities.

Tellingly, during his press conference, Newsom made it clear that his announcement, Cal Matters reported (tinyurl.com/mw6fe7un), “was motivated more by growing public concern about crime than the crime itself,” alluding to statistics by the Public Policy Institute of California that say crime remains at a relative historic low across the state. He also went on to defend Proposition 47 (tinyurl.com/mw6fe7un) — a referendum passed by voters in 2014 that reclassified and downgraded numerous crimes from felonies to misdemeanors



— which many public safety advocates have argued is a key reason behind why we’re seeing high crime today. In response to Newsom’s proposal, Senate Republican leader Scott Wilk of Santa Clarita said in a statement: “It shouldn’t have taken increasing homicide rates, widespread news reports of smash-and-grabs and pleas from Californians for Democrats to come to this realization.”

As we have covered previously (tinyurl.com/3arerrtw), Propositions 47 and 57 and AB 109 have dramatically altered our state’s criminal justice system for the worse, resulting in the release of tens of thousands of inmates. In Los Angeles, the effects of these policies can be seen in the aforementioned crime statistics. In addition, many criminals are benefiting from the progressive criminal justice reform policies (tinyurl.com/3nyhxx6u) of Los Angeles DA George Gascón. Many argue that controversial directives, such as one that prevents prosecutors in the DA’s Office from seeking the death penalty, sentencing enhancements or cash bail in nonviolent cases, have emboldened criminals. Critics like Deputy District Attorney Jon Hatami have argued that the DA’s soft-on-crime policies have been ineffective, saying that they coddle criminals and ignore victims. “Releasing criminals, not charging crime does not work in Los Angeles. And it’s not making anybody any safer,” Hatami told ABC 7 News.

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INCREASED CRIME

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The “defund the police” movement that swept the nation following the killing of George Floyd in 2020 can also be considered a key contributor to rising crime. City officials across the country supported the movement by putting forward reactionary proposals that would slash policing budgets, downsize departments and more. However, in the face of skyrocketing crime, some cities, like Oakland, are backtracking on defunding plans.

According to *NeighborhoodScout.com*, the violent crime rate in Oakland is one of the highest in the nation; the chances of being a victim of violent crime there is 1 in 77. The Oakland Police Department reported (tinyurl.com/5hd3yyas) that violent crime indeed spiked in 2021, with homicides up 23% from 2020 — the highest homicide rate in more than a decade. In addition, robberies involving firearms, carjackings and residential robberies also increased.

“The crime statistics speak for themselves: Progressive policies as well as those made in support of the defunding movement have proven to be detrimental to the safety of our communities,” LAAPOA President Marshall McClain says.

Unfortunately, law enforcement and the communities they serve are bearing the brunt of these shortsighted policies. Departments throughout California and across the nation are contending with rising crime rates while being understaffed and struggling to recruit and retain officers. Officers on the street are also up against more dangers than ever before, with crimes involving firearms on the rise. The Fraternal Order of Police reports that 63 of the 346 officers who were shot in the line of duty in 2021 were killed. These numbers include 130 officers who were shot in 103 separate ambush-style attacks, resulting in the deaths of 30 officers.

This year, high-profile shootings (tinyurl.com/jbstnfhc) across the nation — including in New York, where two NYPD officers were fatally shot recently — have featured prominently on national news programs and grabbed the attention of President Joe Biden, who recently visited NYPD Headquarters to discuss his administration’s plans to combat violence. Biden commended those who wear the uniform, thanking them for putting “their lives on the line every single day to keep our community safe.” During the meeting, he called for enhanced tools, training and funding for police nationwide, repeating his stance that “the answer is not to defund the police,” CNN reports. Time will tell whether the president’s words will translate into action and whether city and state officials will follow suit.

“This is arguably the most difficult time to be a police officer. Crime is rising, yet police officers are not being given the support they need to do their jobs effectively. Instead, we are being vilified by certain politicians, the media and community groups,” McClain says. “Law enforcement needs support and policies that protect our communities and public safety, not criminals. The writing is on the wall — crime rates will continue to climb if these progressive policies remain in place.”



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Supreme Court Again Clarifies Qualified Immunity Protection for Peace Officers

By David E. Mastagni and Taylor Davies-Mahaffey

In the recent *City of Tahlequah v. Bond* decision, the United States Supreme Court revisited the protections officers should receive through qualified immunity (*City of Tahlequah v. Bond*, 2021 U.S. Lexis 5310 [2021]).

Qualified immunity provides immunity from certain lawsuits raised against government officials acting in their official capacity. It is important to note that qualified immunity not only protects peace officers but any federal, state or local public official. The Supreme Court has evaluated the protections afforded to government officials under qualified immunity many times before and has held that “The central purpose of affording public officials qualified immunity is to protect them ‘from undue interference with their duties and from potentially disabling threats of liability’” (*Elder v. Holloway* [1994] 510 U.S. 510). The Supreme Court has also stated that “This accommodation for reasonable error exists because officials should not err always on the side of caution because they fear being sued” (*Hunter v. Bryant* [1991] 502 U.S. 224). For peace officers, this means that enforcement of the law is prioritized over the recovery of money damages in a lawsuit.

Public officials and peace officers are entitled to qualified immunity unless they knew or reasonably should have known that the action taken within their sphere of official responsibility would violate the constitutional rights of the plaintiff (*Harlow v. Fitzgerald* [1982] 457 U.S. 800). The Supreme Court in *Harlow* went on to apply an objective reasonableness standard for protection from liability, stating, “Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known” (*Harlow* at 818). For a plaintiff to overcome qualified immunity, they must prove that the constitutional right allegedly violated by an officer was “clearly established.”

In *City of Tahlequah*, three police officers responded to a 9-1-1 call. The decedent’s ex-wife requested police assistance because he was intoxicated and would not leave. While officers spoke with him in the garage doorway, one of the officers asked if he could pat him down for weapons. He denied the officer’s request. As the officer walked toward him, the decedent began walking toward the tools on the garage wall. The officers ordered him to stop, but he kept walking, grabbed a hammer from the back wall, and turned to face the officers. After he obtained the weapon, the officers backed up and drew their firearms. The officers ordered him to drop the hammer, but



he did not comply. The decedent then raised the hammer as if he was about to throw it at the officers. In response, two of the officers fired their weapons, killing him.

The decedent’s estate sued the two officers who fired their weapons for alleged violations of his Fourth Amendment right to be free from excessive force. The District Court granted the officers’ motion for summary judgment, both on the merits and under qualified immunity. The Tenth Circuit Court of Appeals reversed the District Court’s decision, finding that several cases established that the officers’ conduct was unlawful.

In their review of the case, the Supreme Court held that the officers did not violate any clearly established law. The court explained that the doctrine of qualified immunity shields officers from civil liability as long as the officer “does not violate clearly established statutory or constitutional rights.” The court explained the importance of specificity in rules and precedence because it is often difficult for an officer to determine how the relevant legal doctrine will apply in the specific scenario they are facing.

The Supreme Court found that none of the decisions the Court of Appeals relied upon came close to establishing that the officers’ conduct was unlawful. The court held that the officers were entitled to qualified immunity and reversed the Court of Appeals decision, thus shielding the officers from further litigation.



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