

BOLO

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The Newsletter for The Los Angeles Airport Peace Officers Association



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LAAPOA/PORAC 2013 Legislative Recap

The California Legislature recessed for the 2013 session at midnight September 12. Below is a recap of LAAPOA/PORAC's priority bills that were still making their way through the Legislature in the last weeks of the session.

AB 128 by Assembly Member Steve Bradford (D-Los Angeles): Existing law establishes categories of peace officers with varying powers and authority to make arrests and carry firearms. Existing law provides that a person who is employed as an airport law enforcement officer is a peace officer whose authority extends to any place in the state for the purpose of enforcing the law in or about the properties owned, operated and administered by the officer's employing agency or when making an arrest if there is immediate danger to a person or property, or of an escape of the perpetrator of an offense. Existing law authorizes this category of peace officer to carry a firearm. This bill, if the L.A. Police Commission and L.A. Board of Airport Commissioners enter into an agreement to enable the Inspector General of the L.A. Police Commission to conduct audits and investigations of the L.A. Airport Police Division, on or before April 1, 2014, would place an airport law enforcement officer regularly employed by L.A. World Airports, as defined, within a different category of peace officers whose authority extends to any place in the state without the above restrictions as to arrest powers and with the authority to carry specified firearms.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Los Angeles, relating to law enforcement at L.A. International Airport, by adding the L.A. Airport Police into 830.1 penal code status as of January 1, 2014. LAAPOA is the primary sponsor of AB 128, with PORAC support, and this bill is currently on the governor's desk awaiting his signature.

AB 607 by Assembly Member Henry Perea (D-Fresno): Existing law provides for payment of workers' compensation death benefits to children of peace officers lost in the line of duty. The law was amended in 2002 (AB 749) with the intent of extending benefits to "children who are physically or mentally incapacitated from earning until the death of these children."

However, the 2002 amendment has created ambiguity wherein it is interpreted to only provide benefits to children based on the existence of a "surviving totally dependent parent" and the language has resulted in inconsistent decisions limiting (rather than expanding) benefits to incapacitated children. This legislation updates archaic language in existing law governing these payments, in which these

benefits are not afforded to "minor children of deceased employees or children of deceased employees who are physically or mentally incapacitated from earning." PORAC is the sponsor AB 607, which is currently on the governor's desk awaiting his signature.

AB 1373 by Speaker John Perez (D-Los Angeles): Under current workers' compensation law, with some exceptions, proceedings to collect death benefits must be commenced no later than 240 weeks from the date of injury. Thus, the families of peace officers and firefighters with work-related injuries, such as cancer or a heart condition, have at times been left without death benefits because advances in medical science outpaced the legal limits on the filing date for the collection of benefits.

AB 1373 rectifies this by revising the filing time for a peace officer or firefighter who loses their life due to their work-related cancer, tuberculosis or blood-borne infectious diseases such as MRSA, to 480 weeks from the date of the injury. PORAC is the co-sponsor of this measure, which is currently on the governor's desk awaiting his signature.

SB 57 by Senator Ted Lieu (D-Torrance): This bill would provide that the unauthorized removal of an electronic, GPS or other monitoring device affixed as a condition of parole or post-release community supervision is an offense punishable by imprisonment in state prison for 16 months, two years or three years. Parolees throughout the state are tampering with and removing these devices, creating a significant public safety hazard. This measure would provide a deterrent to those who in the future choose to violate the parameters of their parole or post-release community supervision. PORAC is actively supporting this bill, which is currently on the governor's desk awaiting his signature.

SB 105 by Senate President Pro Tem Darrell Steinberg (D-Sacramento): This bill was the response to the Supreme Court ruling that California reduce its prison population by an additional 10,000 inmates by the end of 2013. Governor Brown, Pro Tem Steinberg, Speaker Perez and stakeholders reached a compromise in SB 105, which appropriates \$315 million to meet the population reduction set by the courts.

Specifically, SB 105:

- Lays the foundation for longer-term changes to the criminal justice system, in collaboration with the Legislature and stakeholders.
- Strengthens existing local efforts (SB 678) to manage offenders by increasing the amount of funding that county probation

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departments receive if they can serve felony probationers locally and keep them from coming to prison.

- Requires that if the court modifies the order in a way that reduces the cost of compliance, the first \$75 million in savings will go to reducing recidivism. Half of any additional savings would go to that fund and the other half would revert back to the general fund.
- Provides incentives to local probation departments to keep felony probationers from returning to prison.

PORAC actively supports this measure and was one of the key stakeholders in the discussions that took place during the drafting of this measure. This bill is currently on the governor's desk awaiting his signature.

SB 131 by Senator Jim Beall (D-San Jose): The Legislature passed SB 1779 in 2002 to amend the existing civil statute of limitations for damages arising out of childhood sexual abuse. That law limits the ability of child sex abuse survivors to seek damages, stating that an action must be filed by the plaintiff's 26th birthday or within three years of the date that the plaintiff reasonably discovers their psychological trauma links to sexual abuse.

SB 131 encourages victims of child sex abuse to come forward by providing a one-year window for victims who were over the age of 26 during the previous one-year window in 2003, but had not made a causal connection between their childhood abuse and their adult psychological injuries or illness until after the window expired to bring a claim.

All survivors deserve the right to seek justice and PORAC actively supports this measure, which is currently awaiting the governor's signature.

SB 303 by Senator Steve Knight (R-Antelope Valley): Current law allows public safety retirees to maintain their law enforcement identification card and CCW endorsement after retirement. This ID is provided by the agency from which the officer retired. There was no procedure in place to handle the issuance/renewal of these cards when the original

agency had been absorbed by another organization or had disbanded. PORAC worked with police and sheriff organizations on this legislation stipulating that the "succeeding agency" shall be responsible for retiree IDs and CCWs if they have or intend to contract with another agency for police services. PORAC sponsored SB 303, which was signed by Governor Brown on August 26.

SB 313 by Senator Kevin de León (D-Los Angeles): The Public Safety Officers Procedural Bill of Rights Act (POBOR) provides a set of rights and procedural protections to specified public safety officers. The Act fails to address a disturbing trend in law enforcement in which agencies take punitive actions against their employees based solely on an officer's inclusion on a Brady list.

This bill seeks to stop this unfair practice. Instead, this bill maintains management's authority to take actions against officers for the underlying action that caused the officer to be investigated. PORAC is the sponsor of SB 313, which made it to the governor's desk at the end of August. During discussions with Governor Brown, PORAC agreed to address the ongoing concerns of California chiefs' and sheriffs' associations and made minor amendments to the bill. The bill then went back to the floor of the Senate and Assembly, and is now waiting for Governor Brown's signature.

SB 396 by Senator Loni Hancock (D-Berkeley): SB 396 aims to ban high-capacity magazines in California. Thousands of retired peace officers in California purchased high-capacity magazines for their work and/or were issued these magazines with their service weapon and, upon retirement, were allowed to purchase both. Under SB 396, these officers would be required to turn them in or take them out of the state, as they will no longer be legal in California.

PORAC actively opposed this measure, as it is simply unfair for the state to mandate this without just compensation, or to not allow honorably retired peace officers to register these legally purchased and owned magazines. This bill was brought up on the next-to-last day of the session, and after intense lobbying from PORAC was defeated. The bill was moved to the inactive file but could be debated when the Legislature reconvenes in January.



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The Board of Directors meets on the third Thursday of each quarter at the LAAPOA Headquarters.

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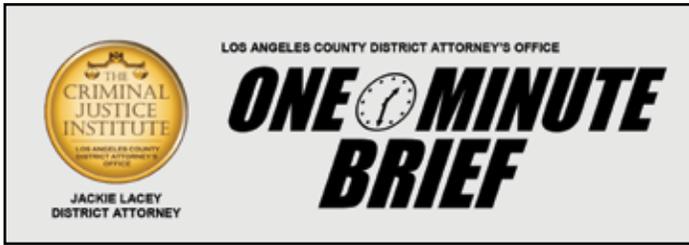
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Number: 2013-17

Date: 09-05-13

By: Mark Burnley

Topic: Informant as witness

Issue: What happens if an individual who happens to be a police informant witnesses a crime that has nothing to do with the informant's relationship with law enforcement?

Law enforcement investigations are sometimes prompted or aided by confidential informants. Evidence Code sections 1040, 1041 and 1042 establish *privileges* to prevent the disclosure of informants, and procedures for litigating challenges. Informants who merely "pointed the finger of suspicion" at a defendant generally need not be disclosed. (*People v. Wilks* (1978) 21 Cal.3d 460, 469.) However, the identity of a *material* informant may need to be disclosed if the defendant demonstrates a reasonable possibility that the informant could give evidence on the issue of guilt that might result in the defendant's exoneration. Peace officers who perceive a need to protect an informant's identity normally consult local prosecutors for assistance in doing so by proper means.

Sometimes an individual who also happens to be a police informant witnesses a crime that is completely independent of and unrelated to the informant's relationship with law enforcement. For example, a narcotics informant may witness an assault or a murder that has nothing to do with narcotics or the informant's relationship with law enforcement.

Even though the witness was not acting as an informant when he or she witnessed the defendant's crime, officers may believe they need to conceal the existence of such a witness (in order to "protect" the informant's identity) and will attempt to do so by deliberately omitting all information about the witness/informant from the police report. To make matters worse, the officers will also fail to mention the existence of the witness/informant to the prosecution at the time of filing.

This is *not* proper for numerous reasons. First and foremost, failing to include the witness/informant in the police report puts the prosecution at a major disadvantage. The defendant (and presumably the defense attorney) will know that the witness was present. The defendant will (correctly) conclude that the reason the police report is silent as to the witness' presence is because the

witness is somehow working with law enforcement. Not only will this endanger the informant's safety, but concealment of material information from the prosecutor may ultimately result in charges being dismissed or reduced, or a conviction being reversed.

Additionally:

- Falsifying a police report (PC § 118) and the knowing and deliberate misstatement of a material fact in testimony or in a sworn search warrant affidavit (PC § 118.1) are crimes.
- Material misstatements or omissions by an officer in reports or testimony may result in the officer being entered into a *Brady* Alert System for disclosure in future cases in which the officer is a material witness.
- Willful suppression or fabrication of evidence may cause civil liability for the officer and department. (*Tennison v. San Francisco* (9th Cir. 2008) 548 F.3d 1293.)

At the time of filing, it is vitally imperative that the prosecution be advised that a witness happens to be an informant, even though the witness was not acting as an informant at the time of the defendant's crime. If needed, the prosecution can use Penal Code § 1054.7 to properly resolve discovery issues related to the witness' status as an informant.

Bottom line: There are appropriate mechanisms for protecting the identity of police informants; pretense by omission is not among them.

For information on prosecutorial and law enforcement training offered by the Los Angeles County District Attorney's Criminal Justice Institute, please visit <http://da.lacounty.gov/CJI>.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.

Los Angeles Airport Police Athletics and Activities League (LAAPAAL) presents

Mistletoe Memories

December 7, 2013, 7 p.m.

You are invited to celebrate the holidays with us! Come out with friends and family to enjoy this festive season and good company. With a live DJ, casino games and free raffle, you are sure to have a great time!

For more information, please call (310) 242-5218 or visit laapaaal.eventbrite.com.



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*Enrollee must be an actively working City Employee and a City Employees Club Member in good standing as of September 9, 2013.

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