

Association for Los Angeles Deputy Sheriffs

2009 – 2010 Final Legislative Summary

By

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State budget woes made the 2009-2010 Legislative Session a most difficult challenge. Resolving this year's budget took longer than ever as final fiscal resolution was 100 days overdue! Active lobbying by ALADS helped protect public safety funding for yet another year, but huge cuts were made to other programs. However, perhaps our biggest public safety challenge came from our Governor who proposed drastic changes to the state's corrections system.

Legislation Affecting Corrections

To help close a gaping budget deficit, the Governor proposed an early release of 37,000 "non-violent" and "non-serious" inmates. Both through media and lobbying, ALADS was a leader in helping defeat that proposal, as well a leader in helping defeat another Administration backed measure to "shift" up to 24,000 state inmates to county supervision. With a court ordered "cap" on jail capacity, this proposal was a "de facto" form of early release, since each new prisoner taken into county custody meant the release of a county inmate.

Although both the "early release" and "jail dump" proposals were defeated, some of the Administration's correction's proposals were passed. The most regressive of the correction's budget deals was the "non-revocable parole" (NRP) program. The ongoing myth that state prison harbors thousands of "non-violent" and "non-serious" felons was never more evident than after adoption of this disastrous program.

The NRP program came under serious public scrutiny when, on July 10, 2010, after a long police car chase, Joseph Rueda opened fire on two police officers. He was shot and killed in the ensuing gunfight. Afterwards it was discovered that Rueda, a known gang leader, had a long history of violence but, because he was not convicted of those "violent" crimes, he was granted NRP status. The Department of Correction's (CDCR) California Static Risk Assessment Tool ignored his prior background and probation report and classified Rueda as "non-serious" and "non-violent" and eligible for NRP. It was only after the Rueda incident that CDCR acknowledged that, due to a

“flaw” in its system, over 600 violent inmates had been erroneously granted NRP status. Today, CDCR has still not located many of these violent criminals.

AB 1678 (Lieu, D., Torrance) co-sponsored by ALADS, was introduced to address some of the problems with NRP by tightening-up current law (i.e. make known gang members, like Rueda, ineligible) and informing local law enforcement via CLETS to help ensure every officer on patrol could identify NRP parolees. Unfortunately, **AB 1768** was held in the Appropriations Committee “on suspense” as being too costly. **AB 2290** (Bradford, D., Inglewood) would have required 45 day notice for NRP parolees. Unfortunately, that measure was vetoed. However, we were able to get another ALADS supported bill, **SB 76**, (Leno, D., San Francisco) passed. This bill cleaned up another budget “mistake” by rolling back county jail sentencing credits to pre-January 25, 2010 levels. In so doing, **SB 76** eliminated the unintended “early release” of inmates by counties, and helped implement **SB 678** (Leno, D., San Francisco) by allowing local custody time to be used by probation departments to intensely supervise select offenders at the local level.

Legislation Affecting Peace Officer Rights, Safety Protection

In 2004 the Public Safety Officials Home Protection Act Advisory Task Force filed a Legislative Report with specific recommendations. The report was agreed to by a diverse group of interested parties, including law enforcement officials, prosecutors, public defenders, judges, assessors, recorders, real estate agents, bankers, title companies and internet data vendors, and has brought about a number of privacy bills being passed.

Recently we have been bombarded with legislation like **SB 1019** (Romero, D., Los Angeles) calling for “sunshine laws.” However, the adverse impact of “sunshine laws,” when information is so public, may be a danger to officers. In Los Angeles alone, two deputy sheriffs were killed outside their homes most likely because of easy access to personal information. Investigators link easy access of personal information about public safety officials as a significant factor in calculating threat assessment. Although peace officers must be careful about personal information, passage of **AB 32** (Lieu, D., Torrance), actively supported by ALADS, was vital to ensure the privacy and safety of peace officers and their families. Another actively supported safety bill for officers, **AB 1813** (Lieu, D., Torrance), provides expanded privacy protection for current public safety officers who face a security threat of access by smart cell phone applications of their

private personal information. The expanded protection for eligible members and their families will provide internet privacy protection for retired peace officers as well. The safety of these officers is often threatened with a rampage of revenge by inmates, and with the steady proliferation of internet sites offering personal information about these and other elected and appointed persons, it can now be used as a tool to find, attack, and even assassinate law enforcement officers. Unauthorized release of personal information threatens not only an officer but also to innocent family members.

Recently, California's "Good Samaritan" law was interpreted by the California Supreme Court to apply only in "medical" emergencies. This narrow construction by the Supreme Court would be likely to discourage peace officers, firefighters and other Californians from coming to the aid of others in emergency situations for fear of a lawsuit. **AB 83** (Feuer, D., Los Angeles) restores the broader understanding of the "Good Samaritan" law so that persons acting "in good faith" in non-medical emergencies have immunity for all but gross negligence or willful and wanton conduct.

On April 17, 2008, the California Supreme Court, in *Mays v. City of Los Angeles* (43 Cal. 4th 313), overturned Section 3304 (d) of the Peace Officer's Bill of Rights by holding that "although the agency is not precluded from proposing specific discipline at that time, *it is not required by Section 3304 (d) to do so.*" This decision meant that the intent of POBR, to limit the investigation and notice of proposed discipline to one year, had been misconstrued and, in effect, overturned. **AB 955** (De Leon, D., Los Angeles) clarified the *May's* decision to restore the protection of GC 3304 (d) that was in effect prior to this case.

Originally sponsored by ALADS, Government Code Section 3304 (d) was amended into the POBR to protect officers from the management practice of capriciously opening an investigation on an officer, putting that officer on administrative leave, and then dragging that investigation out over a long period of time. These investigations would sometimes take years to complete. It is extremely prejudicial when an officer is put on administrative leave for a long period of time. In the past, management had used this investigative tool simply as harassment for an officer they did not personally care for, knowing full well that eventually when the case goes to court, the officer would be reinstated with full pay. Our thanks to other law enforcement groups, PORAC and the CAHP in particular, for helping get this adverse court decision off the books.

California law specifies death benefits payable to surviving children of peace officers, firefighters, or local safety member of any retirement system. An expanded definition of "child" now includes a step-child living in the home at the time. Benefits were calculated to age 18.

AB 1696 (Berryhill, B., R., Stockton) provides an education extension benefit for a dependent child of a deceased firefighter or law enforcement officer until the youngest child reaches 19 years of age, provided he or she is still attending high school.

An important officer safety bill, sponsored by ALADS, was **SB 408** (Padilla, D., Los Angeles). **SB 408** was introduced in response to the Second District Court of Appeal's decision in *People v. Saleem*, 180 Cal App 4th, 254 (2009) to overturn the law that prohibited a violent felon from possessing body armor. **SB 408** sought to remedy this case law by defining body armor with a straightforward definition taken from Penal Code Section 12022.2 to make it very clear *that violent felons are prohibited from possessing any body armor whatsoever*. **SB 408** will help protect the lives of law enforcement officers and citizens by making it illegal, once again, in California for violent felons to possess body armor. Violent felons who possess body armor represent a serious threat not only to law enforcement officers, but to the general public as the "North Hollywood Shootout" demonstrated!

Another ALADS sponsored officer safety bill was **SB 839** (Runner, R., Lancaster). When an officer goes down, suffers serious bodily injury, or is assaulted with a deadly weapon, that officer and the public will now be protected by the addition of a "Blue Alert." The "Blue Alert" will work exactly like the current "Amber Alert." Given the number of California "cop killings," and particularly after four Oakland officers were slain, this "Blue Alert" legislation is both needed and timely. Experience shows when someone brutally kills a cop, they have no reservations about killing an innocent citizen.

A bill which ALADS actively supported was **AB 2253** (Coto, D., San Jose) This bill extends longer workers' comp benefits to cancer victims. Current law provides a rebuttable cancer presumption for firefighters and those public safety officers who demonstrate that they were exposed to a known carcinogen linked to a disabling cancer while in the service of a public agency. The original law set a date of coverage not to exceed five years beyond a firefighter's or public safety officer's last day of service. Since the passage of that first presumption bill, cancer research has brought new evidence that there is a need to strike the current law cap in favor of a new cap – in recognition of the existence of prolonged cancer latency periods. This measure allows coverage for 15 years beyond the last day actually worked. **AB 2253** is memorialized in honor of Los Angeles County firefighter, Dallas Jones.

Legislation Adversely Affecting ALADS

In addition to the "early release" and "jail dump" bills, there were a number of other measures that would have hurt our members, which ALADS actively opposed and successfully defeated.

SB 711 (Leno, D., San Francisco) was another “sunshine law” sponsored by the California Newspaper Publishers Association (CNPA) which would have opened up the collective bargaining process to the media. While the outcome of labor negotiations should be public, this bill would have put a “chill” on open and free negotiations and resulted in delays, if not crippling, the collective bargaining process. **SB 711** failed to pass its first committee.

Another Leno bill, **SB 1347**, would have codified the federal case of Bryan v. McPherson. In essence, the McPherson case and **SB 1347** would have imposed very restrictive criteria on the use of tasers - in fact, it would have imposed almost the same criteria currently employed in use of deadly force situations. Choosing the appropriate level of force is often a split-second decision, and may involve the lives or safety of the officer and the public. Unnecessarily restricting use of force by tasers puts the use of deadly versus non-deadly force on an equal plane – a bad policy that would have led to bad results! Officer safety should always be the principal criteria in non-deadly use of force (as was later recognized in another federal case, Mattos v. Aragano.)

Other bills actively opposed by ALADS and defeated include **AB 312** (Ammiano, D., San Francisco) which would have created a state Office of Citizen’s Complaint for BART ; **AB 390** (Ammiano, D., San Francisco) which would have created the Marijuana Control, Regulation and Education Act; **AB 633** (Ammiano, D., San Francisco) which would limit application of the death penalty in “special circumstances” cases; **SB 60** , D., Los Angeles) providing drivers’ licenses to undocumented persons; **SB 373** (Walters, R., Tustin) and **AB 1700** (Gaines, R., Roseville) which would have repealed the VLF with respect to public safety funding; **AB 399** (Yee, D., San Francisco) and **AB 1751** (Ammiano, D., San Francisco) which would have eased sentences on serious and violent juvenile offenders; and **SB 1331** (Cedillo, D., Los Angeles) which would have limited application of the death penalty in any case where race could be a factor.

Legislation Affecting Pensions and Retirement

There were a number of ALADS co-sponsored retirement bills which were enacted into law. **AB 1658** (Lieu, D., Torrance) sponsored by ALADS, PPOA, and the Department would allow employees of the Office of Public Safety to purchase safety retirement credits in LACERA while **AB 1354** (Fong, D., Mountain View) would amend the ’37 Retirement Act to allow death benefits for employees killed while on military duty. **AJR 10** (Torlakson, D., Martinez) would require the President and Congress to enact the Social Security Fairness Act to allow public safety retirees to collect both pensions *and* social security if they qualify for both while **SJR 30** would urge Congress to amend the IRS Code to allow public employees to treat elective deferrals as Roth contributions.

However, much of the attention concerning pensions was as much a political issue as a legislative one. The Governor was successful in getting his budget pension trailer bill (**ABX6 22**) passed. This trailer bill, *applicable only to state bargaining units* without a contract, would roll back pensions and retirement benefits to pre **SB 400** levels. For CSLEA and CCPOA members (CAHP has a contract), this meant a rollback in benefits to 2% at age 60 – currently 2.5% at age 55 - and a 3 year, rather than 1 year, final compensation formula.

Other important pension bills, were **AB 1987** (Ma, D., San Francisco) dealing with “pension spiking” and local retirement systems and **SB 1425** (Simitian, D., Palo Alto) dealing with “pension spiking” at CalPERS and Cal STRS. Although the Governor vetoed both bills as “not going far enough,” expect both bills to be reintroduced in the 2011 session. ALADS worked successfully with other public employee unions in defeating **SB 919** (Hollingsworth, R., Murrieta) an onerous measure *which would have rolled back all pension systems to pre SB 400 levels*.

Legislation Honoring Peace Officers

There were a number of bills honoring peace officers that were actively supported by ALADS. **AB 671** (Krekorian, D., Los Angeles) established the Golden Shield Award for all officers killed in the line of duty. **ACR 30** (Mendoza, D., Artesia) established the Los Angeles County Deputy Sheriff David Powell Memorial Highway Segment; **ACR 34**, (Furutani, D., Long Beach) established the Los Angeles County Deputy Sheriff Maria Cecilia Rosa Memorial Highway Segment; **SB 52** (Correa, D., Santa Ana) expands the Peace Officer Medal of Valor Act and two other Correa Resolutions (**SCR 26** and **SCR 96**) designated the California Peace Officers’ Memorial Day.

2011 – 2012 Legislative Outlook

In January, after the Governor’s election, there will be a new sheriff in town. However the legislative landscape won’t change much. The partisan gridlock, the budget delays and the dismal fiscal reality are likely to continue throughout the 2011-2012 legislative session. Realistically, we will be successful in maintaining the status quo. Keeping our public safety funding, in what now appears to be a \$15 billion plus budget deficit, will be an enormous challenge. With fiscal challenges at every level of

government, maintaining funding levels for public safety and local government will become our first priority if we are to avoid layoffs or job cuts. Hopefully, the Schwarzenegger Administration's correction's policies will be reversed by the new Administration. Reform in corrections is badly needed, but "early release" or "jail dump" were deeply misguided policies that sent the wrong message. Public employee pension reform is also going to be a big issue. The Governor's campaign (and other elections) has turned public employee pensions into a major political tug of war, and you can expect legislative action on pensions in 2011, as well as a pension reform ballot measure in 2012.

No matter the outcome of the November Election, we are facing our most difficult and daunting challenges ahead, both locally and at the state level. 2011 will be a time where we have to close ranks and prepare for a fight.

Nothing is going to come easy!